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Supreme Court of the United States

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., ET AL., APPELLANTS,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

FILED NOVEMBER 15, 1949.

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[fol. a]

IN CIRCUIT COURT FOR THE COUNTY OF WAYNE, STATE OF MICHIGAN

CALENDAR ENTRIES

1948

May 17. Bill of Complaint filed, summons issued.

May 17. Order to Show Cause and Temporary Restraining Order signed, filed.

May 20. Appearance filed in pro per.

May 20. Motion to Dismiss filed.

May 21. Intervention and Appearance of Attorney General filed.

May 22. Findings and Opinion of the Court signed, filed.

May 27. Order Denying Motion to Dismiss and Granting Temporary Injunction, signed, filed.

May 29. Amended and Supplemental Bill of Complaint filed.

June 29. Motion to Modify Injunction and Notice filed.

July 2. Answer of Attorney General filed.

July 2. Answer of James N. McNally filed.

July 6. Praecipe for Causes Ready for Trial filed, No. 77202.

July 6. Order Granting Motion to Advance signed, filed.

July 6. Stipulation to Advance filed.

July 15. Parties present, hearing in progress, cause adjourned to July 19, 1948, at 10 A. M., court sheet, Judge Richter, $6,000.

July 19. Parties present, hearing concluded, cause taken under advisement, court sheet, Judge Richter.

July 19. Motion and Order to File Supplemental Bill, signed, filed.

July 19. Supplemental Bill filed.

[fol. b] July 19. Order allowing filing of Supplemental Bill of Complaint, filed.

July 28. Memorandum Brief in behalf of E. F. Black filed.

July 29. Brief for Defendant filed.

Aug. 3. Brief for Defendant filed.

Aug. 3. Opinion of the Court signed, filed.

Aug. 5. Answer to Supplemental Bill filed.

Aug. 11. Degree signed, filed, entered, Judge Theodore J. Richter.

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Aug. 11. Claim of Appeal ($5 pd.) and Proof of Service filed.

Aug. 12. Notice of Entry of Decree and Proof of Service filed.

Aug. 23. Claim of Appeal ($5 pd.) filed.

Aug. 23. Certificate of Court Reporter filed.

Aug. 24. Answer to Second Supplemental Bill filed.

Aug. 24. Notice of filing Claim of Appeal, etc., and Proo. of Service thereof, filed.

Aug. 25. Affidavit, Motion for Extension of Time, Notice, Proof of Service, filed.

Aug. 31. Stipulation and Order Extending Time, signed, filed.

Sept. 2. Settled Case on Appeal, signed and filed, court sheet, Judge Richter.

Sept. 2. Notice of Presentment and Settlement of Settled Case on Appeal and Proof of Service filed.

Sept. 3. Notice of Transmission of Record on Appeal to the Supreme Court filed.

[fol. 1] IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE IN CHANCERY

Honorable Theodore J. Richter, Circuit Judge

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., Emil Mazey, in his own behalf and in behalf of 1776 employees of the Chrysler Corporation, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Filoccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, William T. Archer, Michael Lacey, Harry Southwell, and Blaine Marrin, Plaintiffs and Appellees,

vs.

JAMES N. McNALLY, Wayne County Prosecuting Attorney, and Eugene F. Black, Attorney General of the State of Michigan, Defendants and Appellants

Transcript of Trial Proceedings

The above entitled cause came on for trial before Hon. Theodore J. Richter, Wayne Circuit Judge, without a jury

[fol. 2] on the 15th day of July, 1948, the plaintiffs being represented by Nicholas J. Rothe, of the law firm of Rothe & Zwerdling, and by Harold Goodman, of counsel. The defendant James N. McNally, Wayne County Prosecuting Attorney, appeared in propria persona and by J. Lynn Fewlass, Assistant Prosecuting Attorney, and the defendant Eugene F. Black, Attorney General of the State of Michigan, was represented by Ben H. Cole, Assistant Attorney General, whereupon the following proceedings were had.

To maintain the issue for plaintiffs, the following witnesses were sworn and testified in their behalf:

EMIL MAZEY, being first duly sworn, testified as follows.

Direct Examination.

By Mr. Goodman:

My name is Emil Mazey. I reside in the City of Detroit. I am an officer in the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O.; am Secretary Treasurer of that union, which is generally known as the U.A.W. C.I.O. It is a union, a trade union, association of workers to improve their wages and working conditions and other conditions of employment. As to the trades in which the members work, we have jurisdiction over the auto industry, aircraft, agricultural implements. People in this particular case build automobiles.

We have approximately 550,000 dues paying members in Michigan, and approximately 250,000 members in Wayne County.

The interest of our union in this particular suit is that we feel that the Bonine-Tripp Act limits our constitutional [fol. 3] rights to strike. The act makes it mandatory for the state to conduct elections, and for us to obtain the opinions of people who are not members of our union, before it is possible to strike. The provisions of the act state that a majority of the people in the bargaining unit must vote in favor of strike action before it is possible to strike, and not a majority of those participating in the election, and it is possible under the provisions of the act to have non-members of the union to make a decision that affects the actions of members of our organization, because non-members have a right to vote. We feel that in a strike action the members of our union should have the right to make de-

cisions themselves. We feel that this act denies our right to strike and limits our right to strike, and therefore we are opposed to it.

Our union is controlled by our membership. We elect officers and executive board members at periodic conventions, and the International executive board of our union, which represents our membership, have gone on record unanimously in opposition to this act, for the reasons which I have stated; and our officers and our board members represent the wishes of our membership.

Mr. Cole: I will ask, may it please the court, that that answer be stricken for the reason that if there has been any such action as testified to by the witness, it is a matter of record, and I demand the production of the books and records, and ask his answer be stricken as hearsay.

Mr. Goodman: Well, your Honor, this is in the nature of a class suit. It is brought by Emil Mazey in behalf of the membership of the union, and it is brought by the union members in association. I think he has a right to express [fol. 4] the solidarity of the union membership in regard to the subject of the bill of complaint, if he knows.

The Court: It may stand.

I would like to state that in this particular case we recommended to——

The International Executive Board recommended to our—the Chrysler membership, not to participate in a Bonine-Tripp election if it were held and to take strike action under the provisions of our constitution, and they did. The very fact that they took strike action without having a vote conducted by Bonine-Tripp is the best evidence our membership is opposed to the act and feels the same way about it as we do.

The matter of the right to strike has been a subject of discussion among the membership in my presence.

We have discussed the question of the right to strike with our membership on numerous occasions, we have discussed it during the preparations for collective bargaining and with our membership, the Chrysler situation, General Motors, Briggs, a number of others, and we have pointed out to our membership, and have discussed——

In our meetings with our membership, and leadership of our unions, we reached the conclusion that the Bonine-Tripp Act is unconstitutional.

The Court: Well, that is a conclusion of law.

Mr. Fewlass: May it please the court, if this line of testimony is for the purpose

The Court: That is a legal conclusion.

Q. Mr. Mazey, will you speak concerning your authority as derived from the membership in this matter?

Mr. Cole: I will object to that for the reason that if there is any such authority, it is a matter of record in the consti-[fol. 5] tution and by-laws of the union. We demand the record.

Mr. Goodman: That isn't what I am referring to. There may be authority in the matter of by-laws, but I am referring to specific authority to prosecute this particular action in behalf of members.

The Court. You may answer the question.

Mr. Fewlass: May I make a statement on the record, may it please the court? If this is going to the question of Mr. Mazey's authority to sign this bill of complaint on behalf of the union members, his authority of necessity must be in writing, because an agency for the purpose of committing, doing a particular thing, that has to be in writing, that agency must be in writing also.

Mr. Goodman: That does not apply to class suits, where the class is too numerous to bring before the court.

The Court: You may answer the question.

Q. Will you state, based upon your knowledge of the matter, your authority in behalf of the members to prosecute this suit?

Mr. Fewlass: I object to it on the basis that you can't prove an agency by the oral testimony of an agent.

The Court: You may answer the question.

A. As acting president of the International Union, the constitution gives me specific authority to act on behalf of the membership between board meetings.

Mr. Cole: I object to that on the ground that is absolutely hearsay.

The Court: I will sustain that objection.

Mr. Cole: I will ask that the answer be stricken.

Mr. Goodman: It is merely introductory. He referred

[fol. 6] to the constitution. Now I will point out the constitution.

The Court: Well, you may point out the constitution.

Q. Now I show you a pamphlet and ask you if you can identify it?

A. This, marked Exhibit 1, is a copy of the constitution of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, U.A.W.-C.I.O. I refer to Article 13 of the Constitution, Sections 1 through 14, which deals with the duties of the International President.

Mr. Goodman: I wish to offer in evidence Exhibit 1, referring particularly to the sections that the witness referred to, relative to the authority of the president. I have presented it to counsel and counsel doesn't want to look at it. I therefore offer it in evidence.

Mr. Cole: I have no objection to the entire document being admitted in evidence, for whatever it may be worth.

The Court: Very well, it may be admitted.

A. I can read from the constitution the general authority of the president. On Page 32, Article 13, Section 1, states:

> "The International President shall preside at all sessions of the International Convention and all sessions of the International Executive Board. He shall perform such other duties as are necessary to protect and advance the interests of the International Union, the general membership through the official publication. He shall report his activities to the quarterly meeting of the International Executive Board for approval or rejection and to the International Convention.
>
> [fol. 7] "Section 2. Between sessions of the International Executive Board, he shall execute the instructions of the International Executive Board and have full authority to direct the working of this organization within the provisions of this Constitution and shall report his acts to the regular quarterly meeting of the International Executive Board."

I have been acting president since April 20 by virtue of the attempt to assassinate President Walter Reuther, who was disabled. Our constitution provides that in the absence of the President, the Secretary-Treasurer assumes

the President's duties; that is the reason I am Acting President. Apart from my authority under the constitution to protect the rights of the member in the union, we had meetings of our Policy Committee, in which we discussed the advisability and feasibility of our suit in relation to the question of the matter of protecting our membership; and in addition to that we had numerous representatives of our local unions, along with over a thousand members of our union, ask that this lawsuit be started. I believe that was after the strike was called. Concerning a suit before the strike was called,——

Mr. Cole: Object to that as calling for hearsay.

The Court: You may answer that question.

A. We considered ways and means of testing this particular act for several months. It was discussed on a number of occasions, methods of testing this particular act. We didn't reach any final conclusions until the Chrysler strike took place, as to the method of testing it.

Q. Now, was there any specific written authority given [fol. 8] you by anybody to represent them in the prosecution of a suit to vindicate the constitutional right to strike?

Mr. Cole: I will object to it for the reason if there is, the document itself——

The Court: He asked if there was. You may answer the question.

A. Yes, there is; there is authority by— Regarding that written report, I don't have it with me. We have affidavits signed by members of our unions, requesting us to take legal action testing this particular law.

Q. And how many signatures are there?

A. There are over——

That document is in our files somewhere. I have looked for it. I wasn't able to find it until this morning; it had been misplaced. I do not have it at the present time, I haven't found it up to this moment.

Well, I think I have already stated that the substance of this document is authority—requests of members of our union for us to proceed with this lawsuit; in their behalf.

Q. And how many signed it?

Mr. Cole: Same objection.

The Court: You may answer that question.

A. The exact number, we have it in our bill of complaint. I believe it is 1477a if I remember correctly. Referring to our bill of complaint, it says 1776. Referring to Paragraph numbered 3 of the bill of complaint, I have read that Paragraph and we claim, in this matter, the rights therein set forth. In this particular section of our bill of complaint, we state that our rights, guaranteed to us under the Fourteenth Amendment of the United States Constitution, are being violated. These rights are to urge by [fol. 9] speech and other forms of communication, the right to engage in a strike in the plants of the Chrysler Corporation, in order to obtain collective bargaining agreement on the matters of wages and working conditions and other conditions of employment.

There was a dispute between the members of the U.A.W. and the Chrysler Corporation, concerning the establishment of a proper scale of wages. The dispute arose about the middle of February, under the terms of our contract to give the corporation notification of our intentions to amend the wage agreement we had, and we notified the corporation about the middle of February of our intention to amend our wage provisions of the agreement.

The Court: Is there such a written document?

A. Yes, there is.

The Court: Then the writing would be the best evidence.

A. Mr. Matthews, who is the director of our Chrysler Department, can produce a copy of this notice. He has it in his files. I know the notice was sent. Under the provisions of the act it is mandatory for us to give a sixty day notice to an employer in the event we wish to amend a contract or terminate a contract. It is further necessary that thirty days prior to the termination of the agreement, we notify the Department of Labor, Federal Department of Labor, of disputes being involved, and in this particular case we followed both steps.

I identify Exhibit 2 as a copy of a notice to—what we call a sixty day notice to employer, that was sent to the Chrysler Corporation, 341 Massachusetts Avenue, Highland Park, Michigan, by Mike Novak, President of the [fol. 10] Dodge Local, and by Norman Matthews, Director of the Chrysler Department.

Mr. Goodman: I wish to offer Exhibit 2 in evidence. Before we question Mr. Mazey further, all counsel here have arrived at an understanding under which the necessary evidence concerning the notice will be established.

Now, I have a book which contains copies of all of the notices required by the federal and the state laws relative to labor disputes. These copies have been exhibited to opposing counsel, and we are ready to produce it and can introduce each and every notice in respect to each and every local in evidence.

In order to avoid making a record altogether too extensive, and for that reason quite impractical, though possible, it is understood among us that the sending of these notices and the due receipt thereof, that is to say, compliance with the National Labor Management Relations Act notice requirements and the Bonine-Tripp Act notice requirements have been made, compliance has been had.

I, however, shall be obliged to produce, upon demand, at any time, the record of those notices, and that obligation shall continue throughout the course of this case.

Mr. Cole: I would like to add something to it:

I am in accord with the statement of counsel. We have been substantially agreed that the various notices required in labor disputes have been given by the unions involved in this particular controversy, and when I say unions, I mean the International Unions and the various locals or any other segment of the organizations involved, both under the federal laws, applicable laws, and the state applicable laws, up to the provisions of the Bonine-Tripp [fol. 11] Law in regard to the election notices, if any. I don't believe the union has any particular function in that respect. In other words, the dispute in this lawsuit involves the non-compliance by the union in their bill of complaint, as predicated upon the non-compliance with the election provisions of the Bonine-Tripp Act.

Now, if counsel, according to his statement, will keep available for our use, for the purpose of putting in evidence in this court, or in the Supreme Court, if the case should go there, or any other court, these documents we are now stipulating as having been executed and served, and so forth, then I am perfectly willing to stipulate that all of these notices were given. It will thereby save a great deal of time and cut down the volume of this particular record.

There is one more thing I wanted to stipulate before we go back to the witness, and that is that on May 11, 1948, that Mr. Norman Matthews, Director of Region Number 1, U.A.W.-C.I.O.,—received a telegram signed by Philip Weiss, Chairman of the Labor Mediation Board of Michigan, stating as follows:

"You are hereby advised that any work stoppage at Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended."

Signed "Philip Weiss, Chairman Labor Mediation Board."

And the same telegram was sent to Mr. Walter P. Reuther, President of the U.A.W.-C.I.O. International Union.

Now, you stipulate those were received?

[fol. 12] Mr. Goodman: I stipulate this much,—I think you will agree with me. Incidentally, I want the record to show that Philip Weiss, Chairman of the State Labor Mediation Board, is present, and you are making this stipulation for the purpose of obviating oral testimony on his part.

I would ask for the further stipulation that these telegrams were sent in view of the fact that efforts at mediation and settlement had become exhausted, and it then became necessary, pursuant to the law, to demand a strike election, and that these notices constitute that demand pursuant to the law.

Is that correct, Mr. Weiss?

Mr. Weiss: That is correct.

Mr. Cole: We will so stipulate.

Mr. Goodman: Counsel so agree?

Mr. Cole: Yes.

A. All the locals got those telegrams, a duplicate of what we read into the record here. In connection with the assertion of the right to strike in the Chrysler dispute, that same right is deemed necessary in other and similar disputes. We have exactly the same set of facts and circumstances in a number of other disputes as we have here in the dispute with the Chrysler Corporation. The matter

of wages, working conditions and other conditions of employment, and ——

Q. Now, can you name some of those matters which have arisen since the Chrysler dispute?

A. Yes.

Mr. Cole: Object to that as immaterial.

The Court: Sustain that objection.

A. After the State Board of Labor Mediation demanded an election, pursuant to the Bonine-Tripp Act, we ignored the request. We informed Mr. Weiss that we would not [fol. 13] agree to the election. In this matter of not agreeing to the election, those participating were our Chrysler Department, the Presidents of our various local unions, and our entire Chrysler membership participated in that decision. Those individuals, including myself, called a strike. We have a strike vote procedure applicable to the union. It is shown in the constitution of the union, it is specifically outlined.

Q. Will you refer to Exhibit 1 and read the sections applicable to the strike vote?

A. The procedure for strike action is covered in Article 49, Section 1, of our constitution, and begins on Page 95. Section 1 reads as follows:

> "Whenever any difficulty arises within the jurisdiction of any Local Union within the shop involved, between its members and any employer or employers, growing out of reduction in wages, lengthening of hours of labor, or other grievances incident to the conditions of employment or whenever any Local Union desires to secure for its members an increase in wages, a shorter work day or other changes in the conditions of employment, the Local Union involved shall call a meeting of all members to decide by secret ballot whether the proposed changes shall be accepted or rejected. The majority vote of those present and voting on the question shall decide. If, as a result of this decision, a strike vote is decided upon, the Local Union Executive Board shall notify all members, and it shall require a two-thirds vote by secret ballot of those voting to declare a strike. Only members in good standing shall be entitled to vote on the question of declaring a strike.

[fol. 14] "Section 2. If the Local Union involved is unable to reach an agreement with the employer without strike action, the Recording Secretary of the Local Union shall prepare a full statement of the matters in controversy and forward the same to the Regional Director and International President. The Regional Director or his assigned representative in conjunction with the Local Union Committee shall attempt to effect a settlement. Upon failure to effect a settlement he shall send the International President his recommendation of approval or disapproval of a strike. Upon receipt of the statement of matters in controversy from the Regional Director, the International President shall prepare and forward a copy thereof to each member of the International Executive Board together with a request for their vote upon the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote of the members of the International Executive Board, the International President shall forthwith notify in writing the Regional Director and the Local Union of the decision of the International Executive Board."

I believe these two sections cover this phase of the problem. In connection with the Chrysler dispute, a strike did take place. We have a record of that strike action taken through the Executive Board, in the Chrysler matter. We can produce them, I can produce it this afternoon, if necessary. Before the Executive Board took action in calling this particular strike, a vote was taken, as a result of our [fol. 15] being able to reach a peaceful settlement with Chrysler Corporation on matters in dispute.

Q. Now, what were the circumstances of the taking of the vote, how was it handled?

A. Special membership meetings were called, and a vote was taken by secret ballot in each of the local unions.

Mr. Cole: I object to that again on the ground that they are putting into this record all that is hearsay on what was done.

The Court: It may stand. Proceed.

Q. Now, was there any election taken in accordance with the Bonine-Tripp Act?

A. There was not. The International Executive Board of the U.A.W.-C.I.O., in granting strike authority to the Chrysler locals, made the authority granted the authority at the discretion of the Chrysler Director, Norman Matthews. He was given full power and authority to call a strike at the time that he deemed necessary and advisable. I am familiar with the events in general attending the strike. The strike was supported by the overwhelming members of our union. We had picket duty and other strike activities that normally take place in a strike. Mr. Matthews, our Chrysler Director, has copies of letters from the local unions, in which they informed him of the percentage of strike vote in each of their local unions. All of the members participated in the strike by refusing to work during the strike. I had supervisory authority over the conduct of that strike, as Acting President of the U.A.W. The fundamental object of the Chrysler strike is to reach a satisfactory wage agreement with the Chrysler Corporation for our membership. We were unable to reach this [fol. 16] agreement in peaceful collective bargaining sessions, and therefore we had to call a strike in order to force what we considered justified demands.

I identity Exhibit 3 as an authorization on the part of 1776 members of our union, authorizing me as Secretary-Treasurer and Acting President of the union, to test the constitutionality of the Bonine-Tripp Act on behalf of these members.

Mr. Goodman: I wish to offer Exhibit 3 in evidence.

The Court: This Chrysler strike has been settled?

Mr. Cole: Yes.

The Court: It now becomes a moot question, doesn't it?

Mr. Goodman: No. They can—— Whoever participated in this strike in violation of the law, if the law is constitutional, can be prosecuted, so the need for the injunction as to the Chrysler strike continues. But not only that. This case brings into question the constitutionality of the act.

The Court: I understand it does.

Mr. Goodman: But as to any violation of the act, it is not a moot question. They are subject to prosecution should the act be held constitutional.

Witness: The Chrysler Corporation has the Dodge Plant, DeSoto, Plymouth, Chrysler Jefferson and Ker-

cheval, Chrysler Highland Par , Amplex Plant, Drop Forge; a plant in Marysville, Michigan; plant in Kokomo, Indiana; plant at Evansville, Indiana; plant at Newcastle, Indiana; and a plant in Los Angeles, California. I may have missed one or two.

A. The U.A.W. and its constituent locals, hold collective bargaining rights in the Chrysler plants. We have bargaining rights for all Chrysler plants.

[fol. 17] We have a master contract with the corporation that gives us bargaining rights for plants in Michigan and plants in Indiana and plants in California.

I identify a pamphlet, marked Exhibit 4, as a copy of collective bargaining agreement between our union, U.A.W.-C.I.O., and the Chrysler Corporation, covering plants in the jurisdiction of Local Number 7, Detroit; Local 3, Detroit; Local 140, Detroit; Local 47, Detroit; Local 227, Detroit; Local 490, Detroit; Local 51, Detroit; Local 375, Marysville, Michigan; Local 230, Los Angeles; Local 371, Newcastle, Indiana; Local 705, Evansville, Indiana; Local 685, Kokomo, Indiana; and Local 961, Detroit, Michigan.

Mr. Goodman: I wish to offer Exhibit 4 in evidence. Any objection?

Mr. Cole: I object to it on the ground the witness states it is a copy of a document. The original is the best evidence.

Mr. Goodman: All right, we will produce the signed original this afternoon.

A. I am familiar with the character of industrial operations conducted by the employers of the U.A.W. members.

The parts flow from Detroit to a number of assembly plants: For example, panels and motors and various component parts of the automobile. And similar parts plants in the State of Indiana ship materials to Detroit plants.

The Court: Well, he said it was similar to interstate commerce.

For example, the Kokomo Plant has a foundry. Many castings are sent to Detroit from the Kokomo Plant.

Mr. Fewlass: May I ask if it is counsel's claim,—if counsel is basing his claim on the fact that there is a conflict [fol. 18] between the Bouine-Tripp Act and the Taft-Hartley Law, or are you basing your claim on the proposition that the Taft-Hartley provides exclusive jurisdiction in the Chrysler strike?

Mr. Goodman: Both of these things are part of my claim; it may be stated in both of these terms. The point raised is that the Bonine-Tripp Act, that is, the election features of the Bonine-Tripp Act, conflict with the provisions of the Taft-Hartley Act, and the election features of the Bonine-Tripp Act are invalid as assuming to legislate in a field of legislation occupied by Congress, as to which the congressional legislation is exclusive.

That is all, Mr. Mazey.

Cross-examination.

By Mr. Cole:

As a representative of the International Union, I attended the so-called mediation sessions conducted by the Michigan Labor Mediation Board. There were joint sessions held, both the state mediators and federal mediators were present at the sessions.

At those sessions I and other members and officers of the union participated, along with representatives of the employer, the Chrysler Corporation. And members of the Labor Mediation Board also were present, of course.

Q. And this mediation in which these parties participated was in progress at the time this strike was called, was it not?

A. Mediation ended when we called the strike. We called the strike when our efforts at mediation failed.

Q. Well, the mediation was still going on at the time the strike was called, was it not?

[fol. 19] A. No. Our meetings with the corporation and meetings with federal and state mediators had broken off at the time we called the strike.

Q. In other words, the mediation arrived at a point where you and perhaps others decided that it was useless to further mediate?

A. That is correct.

At the last meeting that I attended, we informed the corporation that we would put our strike into effect when we left that meeting. I think it was then around seven o'clock or 7:30 in the evening, if I remember correctly. We called the strike the next morning, on May 12th. The last day that I attended the mediation hearings was in the evening of May 11th. The strike became effective at ten o'clock in the

morning on May 12th. Our notice to those concerned, who we wanted to strike, went out during the evening or night of May 11th. I participated in the calling of that strike. The strike was authorized by the International Executive Board of our union. The strike was called by the director of our Chrysler Department, Norman Matthews, who was given authority to call the strike at his own discretion, by the International Executive Board. I participated in the decision to call the strike at that particular time.

I was Matthews' superior officer. This authority, which I say was granted by the International Board, to strike which authority was given to Matthews, was put in writing by the International Board. That writing is still in existence. I have access to it. I can produce it this after oon.

On the evening of May 11th we called a special meeting of the International Executive Board of our union to review the Chrysler situation, and the entire board approved the [fol. 20] calling of the Chrysler strike on the evening of May 11th. The board met in my office, 411 West Milwaukee, in Detroit, Michigan. Those members of that board are resident in various parts of the country. We considered the Chrysler matter a pretty serious matter, and we had called the meeting of the International Executive Board on the eve of our pending strike with the Chrysler Corporation.

Q. So that in advance of the time, at seven o'clock in the evening, on May 11, 1948, when you and other union members, whoever they were, walked out of the mediation proceedings, you had already, or someone had, called the executive board together to decide some problems in regard to the strike, is that right?

A. Yes, I called the board to decide one or two questions. One, there is always a possibility of our reaching an agreement with the Chrysler Corporation, prior to our deadline on May 12th, and the board would have to approve of any agreement that we reached with the Chrysler Corporation before the agreement could be put into effect. Of course, there was always the possibility of our not reaching an agreement, and we wanted the advice and benefit of counsel of our entire board before we made our final decision in the matter.

Q. Well then, do I understand your testimony to be that the entire Executive Board of the International Union of the U.A.W.-C.I.O. participated in these deliberations on the calling of the strike?

A. That is correct. We reviewed the negotiations that had taken place at Chrysler's.

Q. I didn't ask you that. Did they participate in the agreement to call the strike?

A. Yes, they did.

Q. And who are the members of that board?

[fol. 21] A. We have twenty two members of the board. You want their names? I think I can give you all the names without too much difficulty. This particular meeting included the Vice Presidents, Richard Gosser and John W. Livingston; Board Members, Norman Matthews, Michael Lacey, Edward Cote, Joseph McCusker. I know all the members of our board. I can give it to you just as quickly as I can read it. William McAulay, Donnel Chapman, Leonard Woodcock, Richard Reisinger, Paul Miley, Charles Ballard, Ray Berndt, Pat Greathouse, Russell Letner, Cyril O'Halloran, George Burt, Thomas Starling, Martin Gerber and Charles H. Kerrigan and myself.

Q. Now, this board that you have just named had already granted the authority in writing, you state, to Matthews, to call this strike if he saw fit?

A. That is correct.

Q. And was this meeting of the board held before the strike was actually called?

A. Yes, it was.

Q. And all of these board members participated in the discussions, did they?

A. I would say the majority of the board members participated. I am not positive that we had one hundred percent attendance at the meeting. I believe that the entire board was present.

Q. Well, can you tell me any member of the group that you named, with the exception of Walter P. Reuther, that did not participate in the strike called?

A. To my recollection, I believe all the board members were present that evening.

Q. Was Mr. Reuther there too?

A. Mr. Reuther was not present. I didn't mention Mr. Reuther's name.

[fol. 22] Q. No, I know you didn't. I just wanted to make sure he wasn't there. Well, then, was the strike called by the concerted action of that group or by Mr. Matthews?

A. Mr. Matthews actually called the strike because we gave him authority to call the strike. At this particular meeting we reviewed the situation and we reaffirmed our previous position granting him authority to call the strike.

Q. Well, didn't you also discuss with him the question of whether or not he should call the strike?

A. Yes; and it was the unanimous decision of the board that he should go ahead with the strike.

Q. So that this strike was really put into effect by the joint and several action of the persons that you have named on the night of May 11, 1948?

A. Technically, all strikes are put into effect by our board, but we delegated the authority for the actual calling of the strike, putting the strike machinery into effect, in the hands of Mr. Matthews, and he actually called the strike with our approval and authority granted by the International Executive Board.

Q. But isn't it a fact that all the members participating in that meeting we have been discussing, of this group of men that you have just recently named, did actually participate in agreeing to call the strike?

A. Yes.

Q. When you left the negotiations or mediation on the night of May 11, 1948, after having made a strike threat, the negotiations were supposed to continue, were they not?

A. They were not. Negotiations were broken off at that stage of the game. There was no point to continuing them.

[fol. 23] Q. They were broken off by the action of the union and its representatives, is that correct?

A. I would say they were broken off by the refusal of the company to meet our just demands.

Q. When you had made that determination in your mind, that they had refused to meet your just demands, you then broke off negotiations?

A. That is correct. The committee broke off negotiations.

Q. That was when Mr. Weiss, as Chairman of the Labor Mediation Board, sent out the telegram introduced here, was it not, calling attention to the election provisions, and so forth?

A. I believe it was sent out the same night, if my memory serves me correctly.

I know offhand, there are approximately 200,000 employees of the Chrysler Corporation in Wayne County.

I believe I stated on direct examination that it was my opinion, perhaps that of others, that the Bonine-Tripp Act limited the constitutional rights of the union.

Q. And this action which was taken in the Chrysler strike was to your knowledge against the provisions of the Bonine-Tripp Act, was it not?

A. Yes; the action was taken to protect our membership against the provisions of the act.

Q. You knew what the provisions of the act were, did you not?

A. Yes; I did.

Q. At the time the action was taken?

A. That is correct.

Q. And you as an individual decided to take the action that you did, regardless of what the law said on the subject?

A. Yes.

[fol. 24] Q. And that was the attitude of the other parties participating in the conference?

A. That is correct; that was the attitude of our membership.

Q. And it was the attitude of the officers of the various units of the union, was it?

A. It was.

Cross-examination.

By Mr. Fewlass:

Looking at Exhibit 3, my signature does not appear on this document. I did not sign this particular document. I saw several of the people whose signatures are there, sign it. I don't recall their names offhand. The typewritten portion of Exhibit 3 was prepared by our legal counsel, Mr. Rothe, at my request. The statement was given me after the signatures were obtained by 1776 members of our union; they were circulated by members of our union, the various local unions. I don't know any particular individual by name who circulated this.

The only plaintiff in the list of plaintiffs that was present at the board meeting itself was Matthews and myself. The other plaintiffs that are named in the bill were not present at the board meeting.

Q. Now I will refer to Article 49 on Page 95 of your constitution, with which you are no doubt familiar, the provision as follows:

> "If the local union involved is unable to reach an agreement with the employer without strike action, the recording secretary of the local union shall prepare a full statement of the matters in controversy and forward the same to the regional director and the International President."

[fol. 25] A. That is right.

Q. Did you receive such notices from all of the local unions involved?

A. No.

Q. Prior to taking this strike action?

A. In a case of the corporation contract——

Q. Just answer my question. Did you receive notices in this case?

A. No, no; the answer is no.

Q. Now I will quote from the constitution again:

> "Upon failure to effect a settlement, he shall send" —that is the regional director—"the international president his recommendation of approval or disapproval of the strike."

In this instance did you receive such a recommendation of approval of a strike, or disapproval of a strike, from the various regional directors involved?

A. We received it from Regional Director Matthews, who has complete jurisdiction over all of the Chrysler plants.

Q. That is under Region 1?

A. He is director of Region 1. He is also Chrysler Director and his Chrysler directorship gives him jurisdiction over all the Chrysler plants, regardless of what geographical region they may be located in.

Q. Then after that did you prepare a statement of the matters in controversy and forward a copy to each member of the International Executive Board?

A. We discussed and took action on this question at a special board meeting of the International Union.

[fol. 26] Q. You didn't prepare such a document?

A. No; it wasn't necessary. We called a board meeting instead.

Q. It was only necessary in that the constitution provides it?

A. No. The constitutional provision deals with the obtaining of strike approval at times when the board isn't in session. Our board has regular quarterly meetings, and of course we have special meetings on occasions, but between board meetings, in order to obtain routine normal strike approval, it is necessary for the President of the International Union to inform the board members of the matters in dispute and ask for a vote on the same. In other words, the President has authority under the provision of the constitution to grant emergency strike authorizations.

Q. Well, then this strike was called as an emergency under Section 3, is that right?

A. No, it was not. We had either a regular or a special board meeting in progress in Detroit at the time a request was made for strike authorization in the Chrysler plants, and we had a full hearing and discussion of all of the issues involved, by the full board, and the board took action after hearing a report from the Chrysler director and hearing a report from the president of the union.

At this board meeting. Mike Lacey was there.

Q. At the deliberations with this board, did you urge that the strike be called?

A. It wasn't necessary for me to urge a strike be called.

Q. Did you or didn't you?

A. I expressed an opinion that the strike should proceed, yes.

[fol. 27] Mr. Fewlass: That is all.

The Court: That is all.

Recross-examination.

By Mr. Cole:

I recognize those documents. Those duplicate notices from apparently all of these local unions to the State Labor Mediation Board, a duplicate original copy of the notice required to the Federal Mediation and Conciliation Service at Washington, D. C., and it is required under the so-called Taft-Hartley Act were given to the Michigan State Labor Mediation Board, in accordance with the Bonine-Tripp Act. We gave notice under the federal law, but you spoke about

notice given to the state. The notice to the state, I am not certain whether or not it is provided for in the federal law; I don't believe it is. At any rate, these notices were given. We notified both the state and federal agencies as of March 11, 1948.

Mr. Fewlass: May I make certain that I have the proper understanding that the record of the vote will be produced?

Mr. Goodman: Yes.

Redirect examination.

By Mr. Goodman:

We are continuing to ignore the provisions of the Bonine-Tripp Act as it pertains to strike elections.

Recross-examination.

By Mr. Fewlass:

Q. Was this labor dispute settled?

A. Yes, it was settled.

Q. When?

[fol. 28] A. I don't recall the exact date. We had an approximately three week strike at Chrysler Corporation.

Q. Can you get the exact date?

A. Yes.

The Court: We will now adjourn this case until two o'clock.

(Noon recess.)

July 19, 1948,
10:00 o'clock A. M.

Norman Matthews, being first duly sworn, testified as follows:

Direct examination.

By Mr. Goodman:

I live in the City of Detroit. I am Co-Regional Director of the U. A. W. C. I. O. and Chrysler Director. I had occasion to call a strike in the Chrysler plant. I am familiar with the election provisions or requirements of the so-called

Bonine-Tripp Act. I certainly am. I did not wholly comply with them before calling the strike. We complied with the first two steps, but the third step we did not comply. I mean the first two steps that we made application under the Bonine-Tripp, we had mediation on the Bonine-Tripp, but we did not comply with the so-called vote, the election. I am a member of the U. A. W. Board.

Q. And did you, as a member of the board, violate in other instances the election requirements of the Bonine-Tripp Act?

A. Yes, sir, I did.

Q. Now, you mean by that that you authorized, called [fol. 29] or instigated strikes without a majority of those in the collective bargaining units holding an election under the statute?

A. That is correct. Another of those companies was the Timken Detroit Axle Company. That strike is still pending, and is not settled. Another of those companies was the Champion Spark Plug Company, and that strike is continuing and unsettled.

Q. Did you have anything to do with calling the strike in the Gray Marine Motor Company?

A. Inasmuch as it was authorized by the International Executive Board, yes.

Q. And did you have anything to do with calling the strike of the Warner Aircraft Corporation?

A. Inasmuch as it was authorized by the executive board, yes, sir.

Q. In other words, you participated in authorizing the strike without compliance with the Bonine-Tripp Act?

A. That is correct.

Q. Do you intend in good faith to violate the election requirements of the Bonine-Tripp Act?

A. I certainly do.

Mr. Goodman: You may cross examine.

Cross-examination.

By Mr. Fewlass:

I participated in a meeting of the International Union Executive Board of the U. A. W. C. I. O. on Tuesday, April 20, 1948, in the conference room, 808 Book-Cadillac Hotel, Detroit, Michigan. I can't recall if there was a meeting of

the executive board prior to that time. On May 11. I was in court last Friday, the last day this case was in court. I heard Mr. Mazey's testimony.

[fol. 30] I identify Exhibit 5 as the proceedings of a special session of the International Executive Board, U. A. W., held on Tuesday, April 20, 1946, in the conference room, 808 Book-Cadillac Hotel, Detroit, Michigan. I attended that particular meeting. That is a transcript of the proceedings. On page 6 I made the statement: "Mr. Chairman, I have—I move that I be authorized by this executive board to strike the Chrysler Corporation on the question of our wage demands at my discretion. I might say, Mr. Chairman, that we have complied with the Taft-Hartley Law, we have complied with the Bonine-Tripp Law, we have complied with the terms of our constitution whereas our membership has taken a two-thirds vote in all local unions. That being the case, I am asking for the board to give me this authorization at this particular time."

I made that statement. It was my understanding that I had complied with the Bonine-Tripp Law at that time. And therefore I moved to strike.

Q. Now, at that time you said, you stated that you had complied with the Bonine-Tripp Law, and at the present time you say you had not complied with the Bonine-Tripp Law. Will you clarify your positions for us, please, Mr. Matthews?

A. I certainly will, sir. The previous discussions on our executive board, we recognized constitutionally two points in the Bonine-Tripp Law. Point number one was the question of application; point number two was the question of mediation. We were instructed by the board, through our own consent on the board, to disregard the third step regarding the Bonine-Tripp, and that was the election within the plant, for the reason I had stated, which was understandable, of course, to the board there, the reason that I had stated that we had complied with the Bonine-Tripp Law.

[fol. 31] Q. Pursuant to your motion at that time, was there any strike action taken at that meeting?

A. I was given authorization at that meeting, if you read further in the records.

Q. The record shows that you were given authorization to call a strike?

A. Yes, sir.

Mr. Fewlass: I offer in evidence Exhibit 5.

The Court: I think anything that is material to the issues in this case may be admitted.

Q. Were there other strikes, or strike actions, discussed at this meeting?

A. I can't definitely say. The minutes of the board meeting will prove that.

Mr. Fewlass: I will want this book in the record.

Mr. Goodman: We have no objection.

Mr. Fewlass: I might say, for the purpose of the record, if the occasion arises where there is an appeal, I would be very glad to sit down with counsel and cull out that part that is immaterial to our issue. O.K.?

Mr. Goodman: O. K.

Q. Were there others at this meeting on April 20, beside yourself, who instigated the strike?

A. Definitely, yes.

Q. Who were they?

A. I can't recall. The book will prove exactly who attended and whose proxies were there at that particular time.

Q. Did Mr. Mazey at that meeting urge the strike action be taken?

A. Yes, he did.

Q. Did Mr. Reuther urge at that meeting that strike action be taken?

[fol. 32] A. Yes, he did.

Q. Did the other members of the executive board who were present at that meeting urge that strike action be taken?

A. We were all unanimous in our opinion there at that time. They did that in my presence. I was at the meeting on May 11th, of the executive board. Mr. Mazey was at that meeting. I think the majority of the board members were there, but I can't recall all of the members there at that particular time. Mr. Livingston, Mr. Gosser, Mr. Lacey, Mr. Cote and Mr. McCusker were there. I can't recall whether Mr. McAulay was there or not. I think Mr. Chapman was there. Mr. Woodcock, Mr. Reisinger, Mr. Miley and Charles Ballard were there. I think Mr. Berndt was there, Pat Greathouse was there. I don't think Mr. Letner was there; I am not sure. I am fairly sure

Cyril V. O'Halloran was not there; he is from the Coast. George Burt was there. I am not quite sure if Thomas J. Starling was there. Martin Gerber was there. I don't think Charles H. Kerrigan was there.

Q. Did all the gentlemen who were there, as members of the executive board, come to the unanimous decision that they should strike at that time?

A. They certainly did.

Q. Were there none at this board who were opposed to a strike prior to taking the election?

A. None at all.

Q. Did they all urge in concert and instigate this strike?

A. They certainly did.

Redirect examination.

By Mr. Goodman:

Q. Now, Mr. Matthews, since the Chrysler strike there [fol. 33] have been numerous U.A.W. strikes, all of which you have instigated, isn't that so?

A. That is correct.

Q. And in any of them was the election requirements of the Bonine-Tripp Act complied with?

A. I would say there was one exception, and that was done violating our instructions at that particular time, — the Divco Laboratories, I think it is Local 246, on the West Side of Detroit. That was some three or four months ago but wasn't a wage issue. It was a disciplinary action which the company took upon the employees there at that particular time.

Q. Now, will you state the approximate number of strikes that you instigated without complying with the election requirements of the Bonine-Tripp Act?

A. I would say there was around fifty or sixty of them, probably.

Mr. Goodman: That is all.

Cross-examination.

By Mr. Cole:

I mean fifty or sixty different companies, industrial organizations, small and large, that is in the State of Michigan. And as to Wayne County, I would say at least twelve or fifteen.

Q. Are those strikes still going on?

A. Some of them are.

Q. Well, how many strikes currently are going on in Wayne County by U. A. W. C. I. O. members, through your instigation of such strikes in violation of the Bonine Tripp Law, in other words, how many of those strikes are continuing?

A. I would like to qualify my statement with this, if [fol. 34] you don't mind: I am interested primarily, of course, in the strikes which come actually under my jurisdiction as the Regional Director on the East Side, or Chrysler Director. Certainly at our board meetings we authorize strikes in other parts of the state, but after the strike has been authorized, it is entirely up to the regional director servicing that particular section of the state to process the strike, and therefore I am not conversant with the actual strikes outside of the City of Detroit or outside of the East Side of Detroit, so to speak. On the East Side of Detroit, we have at the present time, to my knowledge, the Gray Marine Strike; we also have the Champion Spark Plug strike, and Fitzsimmons, which is a unit of 155. Now, I understand as of this morning, the tool and die strike has been settled, but I would say Fitzsimmons would not have been settled, because their production unit of Local 155, which is an amalgamated local union, —I would say at the present time, on the East Side of Detroit, we have three strikes pending or in progress at this time; it might be more, but I don't recollect there are any more.

Q. Your participation in the instigation of the strikes, East Side or West Side or around the state anywhere, consists of two different phases of your authority then, in one as Regional Director of Chrysler Unions, or the East Side Director of U. A. W. C. I. O., in Detroit; you not only participate with the governing board in the calling of the strike, but actually call the strike itself is that correct?

A. That is correct.

Q. And then in strikes other than those under your specific direction, you participated as a board member in the calling of such strikes?

[fol. 35] A. In the authorization of a strike, that is correct. U.A.W. C.I.O. members in Michigan, I would say

there are approximately sixty thousand members. And in Wayne County I would say approximately fifty-five thousand members. Under our union constitution, it is provided that the members of these various local unions have an election under union auspices on the calling of a strike. Such a vote was held in regard to the Chrysler strike. We have the record of that vote on file here, I think; our attorney has the record here.

Q. Do you have any records, Mr. Matthews, or does an other officer of your union have records, to show how many people voted in these various elections?

A. I don't have the record in my office, but——

Q. Where would they be?

A. I would imagine we could get those records from the local unions involved. I think the reports are on a percentage-wise basis, is that correct?

Q. Yes, I am not interested in the percentage of those that voted. I am interested in how many members of the actual union participated in the strike vote election?

A. I have no knowledge of how many participated, but I do know this, that——

Q. Well, there is no question pending, Mr. Matthews. The record of such a vote would, if kept according to union procedure, show the number who actually voted, would it not?

A. Yes, sir.

Q. And the records of the local would also show the number of actual members of such a union, would it not?

A. That is correct.

[fol. 36] Recross-examination.

By Mr. Fewlass:

After the authorization I received to call a strike on April 20th, then after the confirmation again on May 11th, I certainly did actually call a strike subsequent to the meeting on May 11th, I think the meeting was held after we broke off negotiations with the Chrysler Corporation, around eight o'clock that night, I met with my executive board——

Q. Is that the same group that you had reference to a few minutes ago, that you named?

A. That is correct. I met with my executive board and reported the lack of progress with the Chrysler Cor-

poration, and reported that I had broken off negotiations, stating to the board at that time that I intended to call the employees of the Chrysler Corporation out on strike the following morning at ten o'clock, and the board concurred with my position that particular evening.

Q. What did you do the next morning? How did you set this machinery in motion to call the strike?

A. Subsequent to the meeting with the board, I met with the Chrysler conference which are delegates from all Chrysler local unions, in the per capita basis, same representation as they send to the national convention. Those delegates are not necessarily the officers of the local union. Some might be and some might be other than officers. I met that evening with them. There are some delegates here, I would say, Brother Barber, Brother Art Brudson, Brother McPherson, Brother Walter Rudd; I don't know whether this Brother was a delegate or not; Brother Cook, and various other people. We could easily give you the names of all the delegates there at that particular time. [fol. 37] It was a pretty turbulent meeting, I might say that. I was trying to soft pedal on certain things, and there were a militant bunch of people there that night, and whether I wanted a strike or not, which I was in favor of, striking the corporation, I am afraid that—Well, they concurred unanimously in pulling the plants the following morning at ten o'clock.

Q. Did you go to the meeting and say that you had such authority, and that you called a strike?

A. Definitely.

Q. And all the delegates concurred with that at that time?

A. Absolutely, all those delegates that were present. That meeting was held in the local hall of Local 490 on Oakland Avenue. I forget the cross street. I don't think there was a record kept of any minutes, particularly, taken at that meeting, which meeting was held in this local hall, located on Oakland. And what is the street number?

A Voice: 11812.

A. 11812 Oakland Avenue.

Mr. Fewlass: That is all. Thank you.

Redirect Examination.

By Mr. Goodman:

Q. Mr. Matthews, are there any non-members of the U.A.W. employed at Chrysler, to your knowledge?

A. Yes, sir.

Q. And they, of course, would not participate in any union vote, would they?

A. That is correct.

Mr. Goodman: That is all.

Mr. Cole: That is all.

The Court: That is all.

[fol. 38] Philip J. Weiss, being first duly sworn, testified as follows:

Direct Examination.

Mr. Cole: I want to state on the record that Philip Weiss, called to the witness stand by Mr. Goodman, is the Chairman of the State Labor Mediation Board, and is produced here by myself at Mr. Goodman's request, the same as he produced the plaintiffs in this case. Mr. Weiss is a state officer.

By Mr. Goodman:

Q. My full name is Philip Weiss. I reside in the City of Detroit, I am an officer of the State of Michigan. I hold the office of Chairman of the Labor Mediation Board. Our board is governed by a certain law known as the Bonine-Tripp Act; I am familiar with the provisions of that act which make unlawful a strike not authorized by a majority vote in the collective bargaining unit. That provision has not been ignored by the U.A.W.

Q. To what extent has it been complied with?

A. Well, that is hard to answer. We are continuously holding strike votes. In fact we held a couple of them last week, on behalf of—well, three of them last week, on behalf of the U.A.W. in Wayne County.

Q. Are there any instances in which the U.A.W. refuses to hold strike votes?

A. There have been, yes.

Q. About how many?

A. Let's see, I would say counting Chrysler, roughly, about nine.

Mr. Rothe: What about the tool and die cases?

A. I am counting them as an association. They are Local 55 and 157.

[fol. 39] Q. As to Local 155 and Local 157, how many plants went out on strike?

A. Well, I would roughly say around seventy-five or seventy-seven.

Q. And in all instances they did not comply with the election requirements of the Bonine-Tripp Act?

A. That is correct. But may I answer that further? The tool and die shops operate as an association, and they had been negotiating as an association, and 155 and 157 is always considered to them as one bargaining unit rather than a group of bargaining, or individual bargaining units.

Q. Now, did the U.A.W. comply with the election requirements of the Bonine-Tripp Act in connection with the strike now pending at Detroit Timken Axle Company?

A. No, they did not.

Mr. Goodman: That is all.

Mr. Cole: That is all.

Mr. Fewlass: No questions.

By Mr. Goodman:

Q. I show you a telegram, Mr. Weiss, which I will have the reporter mark as a proposed exhibit.

(Exhibit 6 marked by reporter.)

Proposed Exhibit 6 is a telegram. I sent that in my capacity as Chairman of the State Board of Labor Mediation.

Mr. Goodman: I wish to offer Exhibit 6 in evidence.

Mr. Cole: No objection.

Mr. Goodman: I would like to have it read into the record:

[fol. 40] "Mike Novak,

"President Local Number 3, U.A.W. C.I.O.

"D.L.R.A.M.

"Dodge Main,
"Chrysler Corporation,
"7900 Joseph Campau,
"Detroit

"You are hereby advised that any work stoppage prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939 As Amended,

"Philip J. Weiss, Chairman, Labor Mediation Board of Michigan."

Similar telegrams were sent to the officers of all locals involved in the Chrysler strike.

Mr. Goodman: That is all.

Mr. Fewlass: Before plaintiff's counsel calls the next witness, I would like to state that Friday Mr. Goodman served our office with a proposed supplemental bill of complaint, adding Paragraphs 16, 17, and 18, I think, to the Bill of Complaint.

Now, we proceeded on the theory this morning that that was going to be filed. Mr. Goodman stated that Mr. Southwell had to sign it yet, and if Mr. Southwell is here, we suggest that it be signed before we go any further, so we will be sure of what pleadings we are proceeding on.

Mr. Goodman: He isn't here.

Mr. Rothe: He will be here; he is on his way.

Mr. Fewlass: Well, if counsel will stipulate that the proposed supplemental bill of complaint is the one that he will file when Mr. Southwell gets here, and no other, then I think we can proceed on the theory that those are going to be the pleadings.

[fol. 41] Mr. Goodman: That is right, yes.

Mr. Rothe: Yes.

The Court: He said that is the one that is going to be filed.

Who is your next witness?

ARTHUR GRUDZEN, being first duly sworn, testified as follows:

Direct examination.

By Mr. Goodman:

I live in the city of Detroit, I participated in instigating a certain strike at the Chrysler Corporation.

Mr. Goodman: Cross-examine.

Cross-examination.

By Mr. Fewlass:

I am employed at the Chrysler Corporation, I was not at a meeting of the Executive Council of the U.A.W. C.I.O. on April 26, 1948; I am a member of the Executive Council of my local union. I was at a meeting of the committee called about 9:30, May 11th. Mr. Matthews was there.

Q. What did Mr. Matthews say about the strike that you recall?

A. Well, he come back to the delegate body of Local 490 on Oakland Avenue, in Highland Park, and made a statement that the negotiations between the U.A.W. and the Chrysler Corporation had broken off, that the corporation denied the wage increase that was offered prior to that time, I guess six cents, or something to that effect, and I would say the body at that time voted unanimously [fol. 42] to pull the plants out the following morning at ten o'clock.

Q. Did Mr. Matthews in any way suggest or recommend a strike, at that time?

A. Yes, he did.

Q. What did he say about striking?

A. Well, if I recall, he said that there was no need of any further negotiations because the corporation denied the increase in wages, and there was nothing else to do but to pull the plants out.

Q. Did he says anything about having an election under the Bonine-Tripp Act?

A. Not at that time, I don't recall, because I think we discussed that prior, in my own local union, I believe.

Matthews and Brother Gosser, the Vice-President, attended our special board meeting that I called, during the absence of Mr. Novak, and at that time we discussed the Bonine-Tripp Act, and we decided that we wouldn't live up to it.

Q. And consequently was a strike put in effect at the Chrysler Corporation?

A. Wednesday, on the 12th, at ten o'clock, yes, I would say that I and Mr. Matthews and the other members of that committee acted in concert to instigate this strike at that time to this extent, that the membership voted unanimously in our locals, and our board members——

Mr. Cole: Wait a minute. I am going to object to that statement. The record itself is the best evidence.

The Court: Sustain your objection.

Q. At this meeting did you and Mr. Matthews and the members at the meeting do any act that in your opinion would instigate this strike that occurred on Wednesday morning or the following morning?

[fol. 43] A. Definitely. We all took a position.

Mr. Fewlass: That is all.

Cross-examination.

By Mr. Cole:

I am Vice-President of a local union. I acted in the capacity as the President at that time; Michael Novak is the President, Local Number 3, Dodge Local Number 3. This group, of which I am an officer, Dodge Local Number 3, is a local of the Dodge Plant of the Chrysler Corporation. We have just one local, but we have units, and it is divided up into various units. I am the Vice-President of such local, Local Number 3. We have the records of that local in the office, and they are under my jurisdiction. I can produce them here. Those records would give you a percentage of the vote taken on the special membership meeting called pertaining to the strike vote.

Q. But they would not contain the number of persons who voted?

A. I wouldn't think so.

Q. So that if 20,000 men were employed at this plant, and an election were taken, and 400 voted, and 300 voted in

favor of a strike, your report would be seventy five percent in favor of strike, is that correct?

A. Well, we wouldn't do it that way. The vote was not taken that way.

Q. Do the records of your union show how this strike vote was conducted?

A. By a secret ballot, our records show how this strike vote was conducted, the percentage of it, yes.

Q. Well, isn't there a call for such a strike vote, a notice of some kind, by the officers of your union?

[fol. 44] A. In the plant, yes.

Q. Isn't a record kept of that?

A. I would say there is a record of it, with the exceptions of the amount of people that attended the meeting.

Q. What is the reason for keeping a dark secret the number of people who vote on that kind of an election?

A. I don't think our constitution requests—makes a provision for that. We more or less go according to the constitution. The constitution does not provide such a vote

Q. How many employees are there, of the Dodge plant of the Chrysler Corporation, that are members of the U.A.W C.I.O., if you know?

A. 17,900.

Q. All right, 17,900. Now, in view of the fact that your union keeps no account of the number of people voting under a union election on a strike vote, any percentage of that group might vote, is that correct?

A. Yes.

Q. And under your constitution a majority of those voting would swing the election one way or the other, is that right?

A. Yes.

Q. What percentage of a favorable vote is required in order to carry a strike vote?

A. Fifty-one percent.

Q. Now, that is fifty-one percent of the members who actually vote, is it not?

A. Right.

Q. That is all you count. All right. Now, assuming your figure to be accurate, that there are 17,900 U.A.W. C.I.O. members in Dodge Local Number 3, employed at the Dodge plant, Chrysler Corporation, if only ten per-[fol. 45] cent of those people attended and voted at an

election, and fifty-one percent of that ten percent, or one more than half, voted in favor of the strike, your report would be in favor of the strike, is that correct?

A. I would say so.

Q. Who has, other than yourself, any custody or control over the records of Dodge Local Number 3?

A. The Recording Secretary.

Q. Who is he?

A. Joseph Ptaszynski.

Mr. Cole: That is all.

The Court: That is all, Mr. Grudzen.

HARRY SOUTHWELL, having been previously duly sworn, as shown on Page 129 of this record, took the stand and testified as follows:

Direct examination.

By Mr. Goodman:

I am a resident of the City of Detroit. I am working for the U.A.W., Local 174. I am an officer of the U.A.W., President of the local union, local 174, West Side Local. I am familiar with the election provisions of the Bonine-Tripp Act, very much so.

Q. And have you called a strike in violation of the election provisions of the Bonine-Tripp Act?

A. Yes, I have.

Q. What strike is that?

A. The strike which is now currently taking place in the Timken Detroit Axle Company.

The Court: Any questions?

Mr. Fewlass: No questions.

Mr. Cole: No questions.

The Court: That is all.

[fol. 46] ALEX BARBOUR, being first duly sworn, testified as follows:

Direct examination.

By Mr. Goodman:

My name is Alex Barbour. I live in Detroit. I am an officer in a U.A.W. union, Local 7. I am Chairman of the shop committee. I am familiar with the election provisions of the Bonine-Tripp Act.

Q. And have you called a strike, or participated in calling a strike, in violation of the election provisions of that law?

A. Yes, I have.

Q. What strike was that?

A. Chrysler strike.

Mr. Goodman: That is all.

Mr. Fewlass: No questions.

The Court: That is all.

HOWARD COLEMAN, being first duly sworn, testified as follows:

Direct examination.

By Mr. Goodman:

My name is Howard Coleman. I live at 21200 Telegraph Road. I am the chief accountant of the U.A.W. I have charge of the membership list.

(Exhibit 7 marked by reporter.)

I can identify the paper marked as Exhibit 7, it is a statement of membership of the U.A.W. for six months beginning January, to June, 1948.

Mr. Goodman: I offer Exhibit 7 in evidence.

[fol. 47] Mr. Fewlass: No objection.

Mr. Cole: I don't want to raise any technical objection to it, your Honor. It is not the record; it is a summary, or a statement, allegedly taken from a record by an accountant.

The Court: Well, it may be admitted for what it is worth.

Mr. Cole: I don't know the value of it, or competency.

Mr. Goodman: That is all, Mr. Coleman.

The Court: Does that conclude your testimony?

Mr. Goodman: That concludes the testimony, your Honor.

The Court: Have you any testimony to offer, Mr. Fewlass?

Mr. Goodman: One other matter, your Honor, Emil Mazey, while on the stand, was asked a question by Mr. Cole, and this was the question: "And you represent the union in this suit?" And he said "Yes." Not only does he represent the union, but he represents all members, and I want to have him testify to that.

The Court: I take it for granted that he brings it in behalf of all members of the union.

Mr. Goodman: Yes.

Mr. Cole: The court undersfands it; there is no need of bringing him back.

The Court: I understood it that way.

Mr. Goodman: All right; that is all, your Honor.

The Court: Have you any testimony to offer?

Mr. Fewlass: May it please the court, defendant McNally now makes a motion to dismiss, for the reason that plaintiff has not sustained the burden of proof.

Mr. Cole: I will join in the motion, your Honor, and waive argument.

[fol. 48] The Court: I shall mark this matter heard and submitted, and ask to have briefs filed on the question of law.

STIPULATION AS TO EXHIBITS 3 AND 7

Counsel for the parties hereby stipulate upon the record that Exhibit 3 as hereto attached may be made a part hereof and that the signatures may be omitted, and that Exhibit 7 shows that the average membership from January to June, inclusive, 1948, in United Automobile Aircraft Agricultural Implement Workers of America, C.I.O. was, for Wayne County, Michigan—297,625; for the entire State of Michigan, 449,182 and for the United States and Canada, 869,626.

EXHIBIT 3

We, the undersigned, being employees of the Chrysler Corporation, desire in the County of Wayne full freedom to urge upon fellow employees to strike in concert with us for the purpose of enforcing the demands made by our repre-

sentatives for increased compensation for our labor in and for the said corporation.

We understand that Sections 9, 9a and 9b of Act No. 318 Michigan Public Acts of 1947 require that an election be held and make it unlawful to strike or instigate a strike unless such strike is approved by a majority vote in the plant or the bargaining unit.

We wish to exercise our right to strike in accordance with UAW rules and regulations of which we are members, and consider that our rights are impaired if they are subject to a determination of the majority of employees in any bargaining unit,

We are advised that the statutory provisions requiring such election and restricting our rights to strike in ac- [fol. 49] cordance with the union rules and our own volition are unconstitutional.

We hereby authorize the UAW and Emil Mazey, its Secretary and Treasurer and acting President, for us and in our behalf, individually or collectively as may be convenient, to make us parties to any suit whatsoever for the purpose of having the above mentioned statutory restrictions declared unconstitutional.

In Witness Whereof, we have hereunto set our hands this 14th day of May, 1948.

(Here follow the signatures of 1776 UAW members.)

In Circuit Court of Wayne County

Amended and Supplemental Bill of Complaint—Filed May 29, 1948

The plaintiffs named in the next paragraph respectfully show as follows:

1. The International Union of United Automobile Aircraft and Agricultural Implement Workers of America C.I.O. is a voluntary association of employees in the said industries, is a labor union, and has about 65,000 of its members employed as factory workers in the plants of the Chrysler Corporation in the County of Wayne, Michigan, and it is generally known as the UAW; Emil Mazey is its Secretary-Treasurer and Acting President, and appears

herein in his own capacity, and in behalf of 1776 factory employees of said Chrysler Corporation working in plants in said County, and has been duly authorized in writing by said employees to sign this Amended and Supplemental Bill of Complaint and prosecute this suit in their behalf; Norman Matthews is the U. A. W. Chrysler director; Arthur Grud- [fol. 50] zen, Alex Barbour, Wilson Kuck, Ralph Filoccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, and William T. Archer are employees of said Chrysler Corporation working in plants of said Company in the County of Wayne.

2. The defendant, James N. McNally, is the prosecuting attorney for the County of Wayne, Michigan, and has the duty of initiating and conducting prosecutions for crimes charged and alleged to have been committed in the County of Wayne.

The defendant, Eugene F. Black, intervening herein, as a party defendant, is the Attorney General of the State of Michigan, and pursuant to law (Secs. 176, 187 C.L. 1929) is authorized to intervene in any action and appear for the people of the State of Michigan; and when he deems that the interest of the State requires it, he may prosecute any criminal proceeding.

3. The plaintiffs, as individuals and in association, desire to exercise with full freedom certain rights guaranteed to the individuals under Section 4 and 16, Article 2 of the Michigan Constitution and the Fourteenth Amendment of the United States Constitution. These rights are to urge by speech and other forms of communication conducted in said County that employees of a certain industry known as the Chrysler Corporation and engaged in the manufacture of automobiles known as Chrysler, DeSoto, Dodge, and Plymouth in said County shall go out on strike and remain on strike without such strike being first approved as required by Section 9, 9a, 9b, and 9c of Act No. 318 Michigan Public Acts 1947, until a collective bargaining agreement is reached concerning wages and compensation in respect to their labor.

[fol. 51] 4. Sections 9, 9a, and 9b of Act No. 318 Michigan Public Acts 1947, if valid, makes such strike unlawful unless approved by a majority vote of the bargaining unit as determined by the Board of Labor Mediation and Sec.

22 of said act imposes criminal penalties for instigating, calling, or causing a strike to be placed in effect while mediation or election is pending.

5. There exists a dispute between the members of the UAW and the Chrysler Corporation concerning the establishment of a proper scale of wages and the State Board of Labor Mediation has exhausted efforts to mediate and has demanded that the employees of said Chrysler Corporation submit to an election concerning their right to strike pursuant to the above cited statute.

6. About ten per cent of the employees of said Chrysler Corporation in said County of Wayne eligible to vote in an above-mentioned statutory election are non-members of the UAW.

7. The said UAW has upwards of 500,000 members employed in factories in the State of Michigan, upwards of 200,000 of whom are residents of the County of Wayne. The said Union, for its members and the other plaintiffs, individually and in association assert their right to urge strike action, instigate strikes, call strikes, and to request the aid of others in such strike projects, free from the coercive effects of Secs. 9, 9a and 22 of Act 318 Public Acts of 1947, insofar as the said sections make unlawful and penalize the exercise of said rights unless such strike is approved by a majority vote in the election provided for in said statute, and this assertion of right and the need therefor applies to the existing dispute between the UAW member employees of the Chrysler Corporation, [fol. 52] and also to prospective disputes between UAW members and employers in the State of Michigan concerning the legitimate subjects of agreement between said employees and their employers.

8. Subsequent to the demand for an election by the State Board of Labor Mediation as set forth in Paragraph 5 hereof, and while said election was pending within the meaning of said Act No. 318 Michigan Public Acts 1947, the plaintiffs urged in said County that the employees of said Chrysler Corporation should go out on strike and caused a strike to be called pending said election and the officers of said UAW called a strike pursuant to the urging and instigation of those plaintiffs, and said strike was put

into effect. In the instigation, calling, and putting into effect of said strike there participated substantially all of the UAW members employed by said Chrysler Corporation.

9. All UAW members and the plaintiffs herein who are employees are engaged in the production of goods for Commerce as defined by the National Labor Management Act, and the employer - employee relations of all of said members affect Commerce within the meaning of said National Labor Management Act. The said Chrysler Corporation and all other employee UAW members are engaged in Commerce within the meaning of said Act, and they and their employers are subject to said Act.

10. The Chrysler Corporation operates plants in a number of states. The collective bargaining unit with respect to Chrysler factory employees as defined by and pursuant to the National Labor Management Act extends to the plants in the State of Michigan known as Chrysler, Jefferson, Chrysler Kercheval, Dodge Main, Dodge Forge, Dodge Truck, DeSoto, Highland Park, Amplex Harper and Marys-[fol. 53] ville; plants in New Castle, Kokomo and Evansville, Indiana; and plants in Los Angeles, California. For the employees in said bargaining unit, the plaintiff, the UAW is the accredited and recognized collective bargaining representative, and has caused a collective bargaining contract to be made with said Chrysler Corporation.

11. In connection with the existing wage dispute with the Chrysler Corporation, the requirements and conditions of Sec. 8(d) National Labor Management Act have been complied with. The UAW has served a written notice upon said Chrysler Corporation of the proposed wage rate termination sixty days prior to the time it was proposed to make such termination; it has offered to meet and confer with the said Chrysler Corporation for the purpose of negotiating a contract containing the proposed modifications; It has notified the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute and has simultaneously therewith notified the State Board of Labor Mediation; and it has continued in full force and effect without resorting to strike or lockout all the terms and conditions of the existing contract for a period of sixty days after such notice and until the expiration date of the contract; and the said UAW had served

notice upon the State Board of Labor Mediation of the dispute, together with a statement of the issues involved and of intention to strike, not less than ten days before said strike was to become effective.

12. The defendant, James N. McNally, is prosecuting attorney for said county, threatens to prosecute all persons who in said county instigate a strike or who shall call or cause a strike to be placed in effect while an election [fol. 54] is pending under said Section 9 of Act No. 318 Michigan Public Acts 1947.

The defendant, Eugene F. Black, as Attorney General of the State of Michigan, threatens to prosecute all persons who in said State of Michigan instigate a strike or who shall call or cause a strike to be placed in effect while an election is pending under said Section 9 of Act No. 318 Michigan Public Acts 1947.

13. Insofar as Act No. 318 Michigan Public Acts of 1947 subjects to criminal penalties persons who instigate a strike or who call or cause a strike to be placed in effect while an election is pending under said Section 9, and insofar as such election has application to a strike by reason of a dispute concerning wages or terms of employment in businesses not affected with a public interest not a public utility nor hospital, Sec. 9a of said statute is unconstitutional and void upon the following grounds:

(a) It deprives the plaintiffs of the right to associate together and with others for the purpose of mutual aid and assistance in strike action against their employers unless and until a majority in the collective bargaining unit, including those not associated with the plaintiffs, approve said strike and thereby deprives the plaintiffs individually and in association of liberty without the process of law contrary to Sec. 16 of Article II of the Constitution of the State of Michigan and the 14th Amendment of the Constitution of the United States, and in contravention of said Constitutional provisions and also of Sec. 4, Article II of the Constitution of the State of Michigan, it deprives the plaintiffs and those similarly situated of the liberty of speech.

[fol. 55] (b) It deprives the plaintiffs and those similarly situated of the right to take strike action against their employers unless such action is first approved by a majority

vote of the persons in a collective bargaining unit and thereby deprives said plaintiffs and those similarly situated of liberty without due process of law contrary to Sec. 16, Article II of the Constitution of the State of Michigan, and the 14th Amendment of the United States Constitution.

(c) In making the right to strike depend upon a majority vote in the collective bargaining unit, it deprives the plaintiffs and all employees of liberty to contract singly or collectively concerning the terms of their employment and thereby deprives the plaintiffs and all employees of liberty contrary to Sec. 16, Article II of the Constitution of the State of Michigan, and the 14th Amendment of the United States Constitution.

(d) Except as applied to employees not subject to the National Labor Management Act, in prohibiting strike action unless approved by a majority vote in the collective bargaining unit, it impairs the rights of representation and of collective bargaining possessed by the UAW, and its constituent locals pursuant to the National Labor Management Act 1947, in that it assumes to transfer these powers and rights to a majority in a collective bargaining unit in the State of Michigan, and empowers said majority to continue indefinitely a collective bargaining contract to maintain a condition of no such contract, or to approve terms of contract offered by an employer, contrary to the Commerce clause of the United States Constitution Act I, Sec. 8 (3).

[fol. 56] 14. The UAW brings this action in its own behalf, in behalf of its constituent locals, and its individual members.

15. Unless the election requirements of Secs. 9 and 9a of said statute are declared by this Court to be invalid in view of Secs. 4 and 16 of Art. II, Constitution of the State of Michigan, and the 14th Amendment and the Commerce clause of the United States Constitution, and unless the relief prayed is granted, the plaintiffs will suffer irreparable injury in respect to their said constitutional rights in that they and every employee in said industry may be subjected to the jeopardy of arrest, detention, and trial upon criminal charges, and in great multiplicity of suits, and this jeopardy both to the plaintiffs and to those whom they desire to

associate with in common action constitutes a coercion and a present and continuing impairment of the plaintiffs' constitutional rights of freedom of speech, freedom of association, and freedom to take strike action in concert with others for proper and lawful objects, not only in the present dispute, but in all future bargaining effecting UAW members, and the plaintiffs are without adequate remedy in the exercise and maintenance of these rights save in a court of equity.

Wherefore, plaintiffs pray:

1. That a temporary restraining order directed to the defendant, James N. McNally, issue out of this Court restraining the said James N. McNally, as Prosecuting Attorney, from instituting and from proceeding further in any prosecution involving alleged violations of Secs. 9, 9a, and 9b of Act No. 318 Public Acts of 1947, until determination of the Order to Show Cause; and that the said defendant be ordered to show cause if any there be [fol. 57] before this Court on Friday, the 21st day of May, at 2 P.M., why an interlocutory injunction should not issue continuing the terms of said restraining order pendente lite.

2. That Secs. 9, 9a, and 9b of Act No. 318 be determined to be invalid as in conflict with Secs. 4 and 16, Art. II, of the Michigan Constitution, the 14th Amendment of the United States Constitution, and Secs. 8(3) Art. 1 thereof.

3. That the intervening defendant, Eugene F. Black, as Attorney General, shall be subject to all injunctive relief which may be granted in this cause.

4. That a decree be entered permanently enjoining James N. McNally, as Prosecuting Attorney, and Eugene F. Black, as Attorney General, the defendants, from enforcing by any criminal prosecution and provisions of Section 9a, Act No. 318, Public Acts of 1947.

5. That the plaintiffs may have such other and further relief as shall be meet and as shall be agreeable to equity and good conscience.

The International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O. (Signed) Emil Mazey, Secretary,

Treasurer, and Acting President. (Signed) Emil Mazey, Individually, and in behalf of 1776 employees of Chrysler Corporation in said County. [fol. 58] (Signed) Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Filecia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Reed, William T. Archer.

(Signed) Rothe & Zwerdling, Attorney's for Plaintiffs, (Signed) Harold Goodman, Of Counsel, 526 Dime Building, Detroit 26, Michigan.

STATE OF MICHIGAN,
County of Wayne—ss.

On this 28th day of May, 1948, personally appeared before me the above named Emil Mazey, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Filecia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, and William T. Archer, who being duly sworn, depose and say that they have read the foregoing Amended and Supplemental Bill of Complaint by them subscribed, know the contents thereof, and that the same are true, except as to those matters alleged to be upon information and belief, and these they believe to be true. Further deposes [fol. 59] the said Emil Mazey that he is Secretary, Treasurer, and Acting President of the said International Union of United Automobile, Aircraft, and Agricultural Implement Workers of America, C.I.O., and is authorized to sign this Amended and Supplemental Bill of Complaint in behalf of said union, and that he is specially authorized to prosecute this action on behalf of 1,776 Chrysler employees.

(Signed) D. Charles Marston, Notary Public, Wayne County, Michigan. My commission expires: 6/26/50.

In Circuit Court of Wayne County

Order to Show Cause and Temporary Restraining Order
—Filed May 17, 1948

At a session of said Court held in the County Building this 17th day of May, 1948.

Present: The Honorable Theodore J. Richter, Circuit Judge.

Upon reading and filing the Bill of Complaint in this cause,

It is ordered that the Defendant, James N. McNally, as Prosecuting Attorney for Wayne County, Michigan, be, and he hereby is restrained from instituting and from proceeding further in any prosecution involving alleged violations of Secs. 9, 9a, and 9b, of Act No. 318 Public Acts of 1947, until determination of the Order to Show Cause herein.

It Is Further Ordered that the said James N. McNally, as Prosecuting Attorney, show cause, if any there be, before this Court on Friday, the 21st day of May, 1948, at 2 P. M., why an interlocutory injunction should not issue continuing the terms of said restraining order during the [fol. 60] pendency of this suit, or until the further order of the Court.

It Is Further Ordered that the plaintiffs cause a copy of the Bill of Complaint and this order to be served upon the defendant at least two days before the hearing set upon this order.

Theodore J. Richter, Circuit Judge.

A True Copy.

Edgar M. Branigin, Clerk, By A. Shedd, Deputy Clerk.

In Circuit Court of Wayne County

Appearance—Filed May 20, 1948

To the Clerk of Said Court:

Now Comes defendant James N. McNally and enters his appearance in the above entitled cause, In Pro Per, and by J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys.

James N. McNally, Wayne County Prosecuting Attorney, In Pro Per, J. Lynn Fewlass & Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant, By J. Lynn Fewlass.

[fol. 61] To: Rothe & Zwerdling, Attorneys for Plaintiffs, 3635 Barlum Tower, Detroit 26, Michigan and Harold Goodman, Of Counsel, 526 Dime Building, Detroit 26, Michigan.

Please Take Notice that defendant James N. McNally enters his appearance in the above entitled cause, In Pro Per, and by J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys.

James N. McNally, Wayne County Prosecuting Attorney, In Pro Per, J. Lynn Fewlass & Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant, By J. Lynn Fewlass.

Dated: May 20, 1948.

[fol. 62] In Circuit Court of Wayne County

Motion to Dismiss—Filed May 20, 1948

Now Comes defendant James N. McNally and moves the Honorable Court to dismiss the Plaintiffs' Bill of Complaint heretofore filed in this cause, for the following reasons:

1. That a court of equity has no jurisdiction to entertain the Bill of Complaint and to grant the relief sought therein, or any part thereof, as prayed in Plaintiffs' Bill of Complaint.

2. That the Plaintiffs have a full, adequate and complete remedy at law.

3. That the Bill of Complaint seeks to restrain criminal proceedings for violations of law and to restrain the defendant, a constitutional officer, from performing his official duties and exercising his official function as prescribed by law.

4. That there is no allegation in the Bill of Complaint that the defendant, as a public official, is proceeding illegally and improperly under a claim of right, or that he has threatened to proceed illegally and improperly against the Plaintiffs, under claim of right.

5. That the Bill of Complaint does not set out any other ground for equitable relief than the bare allegation of the unconstitutionality of a criminal statute and seeks the restraint of criminal prosecution thereunder, without essential allegations necessary to clothe the court with jurisdiction.

6. That the Bill of Complaint does not allege that there is any actual dispute between the defendant Prosecuting Attorney and the Plaintiffs, and a court of equity cannot [fol. 63] assume jurisdiction in a case where there is no actual dispute between the parties.

7. That the Bill of Complaint does not allege that the Plaintiffs have violated or intend to violate, or exercise any right contrary to, any section of Act No. 318, Michigan Public Acts of 1947, which carries a criminal penalty.

This Motion is based on the records in this court and cause, and on the affidavit of James N. McNally, the defendant herein.

James N. McNally, Wayne County Prosecuting Attorney, In Pro Per, J. Lynn Fewlass & Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant, 508 Wayne County Bldg., Detroit 26, Michigan, RA. 2370, Ext. 257.

Dated: May 20, 1948.

Duly sworn to by James N. McNally. Jurat omitted in printing.

[fol. 64] In Circuit Court of Wayne County

Intervention and Appearance of Attorney General—Filed May 21, 1948

Eugene F. Black, Attorney General of Michigan, by Ben H. Cole, Assistant Attorney General, hereby determines under the statutory authority vested in the Attorney General that intervention in the above entitled cause is necessary in order to protect the rights and interests of the State of Michigan, and the rights and interests of the people of the State of Michigan.

Therefore, Eugene F. Black, Attorney General of Michigan, by Ben H. Cole, Assistant Attorney General, hereby intervenes in the above entitled cause as a party defendant therein and hereby appears in said cause.

Eugene F. Black, Attorney General, Ben H. Cole, Assistant Attorney General, 1901 Cadillac Square Bldg., Detroit 26, Michigan, Randolph 5083.

Dated: May 21, 1948.

[fol. 65] In Circuit Court of Wayne County

Findings and Opinion of the Court—Filed May 22, 1948

At the hearing of the Order to Show Cause upon the issuance of a temporary injunction in this cause, the defendant moved to dismiss the Bill of Complaint.

It was argued that the jurisdiction in equity to enjoin the prosecution of criminal proceedings existed only as an incident of jurisdiction otherwise acquired; that the defendant had made no threat to prosecute any of the plaintiffs; and that the plaintiffs make no allegations that they have violated or intend to violate any penal provision of Act No. 318, Michigan Public Acts of 1947.

I find all of these contentions without merit. The jurisdiction of equity to protect property and civil rights against irreparable injury where the legal remedy is inadequate is clearly established. General Motors Corporation v. Attorney General, 294 Mich. 558, 564; Truax v. Raich, 239 U. S. 33, 37.

The Bill of Complaint adequately alleges that an election has been demanded by the State Board of Labor Media-

tion and that the plaintiffs as individuals and in association desire to urge that the Chrysler employees in the County of Wayne go out on strike and stay out on strike until a collective bargaining agreement is reached, and that Sections 9, 9a, and 9b of the statute make such strike unlawful, and Section 22 imposes criminal penalties for instigating such a strike while mediation or election is pending.

The law clearly penalizes what the plaintiffs desire to do, and this raises a serious question of whether the plaintiffs are threatened with the impairment of their constitutional rights.

[fol. 66] The remedy by defending against criminal proceedings is clearly inadequate. The excellent statement on this subject by U. S. Circuit Judge Murrah, for the Court in Stapleton v. Mitchell, Atty. Gen. 60 Fed. Supp. 51, 61, is worthy of quotation:

> "In this setting we think it is the inherent prohibitions of the statute standing alone which impose the unconstitutional restraint, and those against whom the statute is plainly directed should not be required to abide the processes of criminal justice in order to obtain the redress to which they are entitled under the Federal Constitution."

The mere silence of the Prosecuting Attorney should not avail to keep the plaintiffs in jeopardy. The Attorney General intervening at the hearing has settled any question concerning prosecution or the threat thereof by announcing in open court he would require prosecution under the law unless such action was enjoined. Thereupon, plaintiffs' counsel stated that he would amend his Bill to show this.

The motion to dismiss is denied, and a temporary injunction may issue continuing the terms of the restraining order.

May 22, 1948.

Theodore J. Richter, Circuit Judge.

A True Copy.

Edgar M. Branigin, Clerk, by Don Wojcik, Deputy Clerk.

[fol. 67] IN CIRCUIT COURT OF WAYNE COUNTY

ORDER DENYING MOTION TO DISMISS AND GRANTING TEMPORARY INJUNCTION—Filed May 27, 1948

At a session of said Court held in the County Building in the City of Detroit, this 27th day of May, 1948.

Present: The Honorable Theodore J. Richter, Circuit Judge.

The Order to Show Cause and the Motion of Defendant, James N. McNally, to dismiss the Bill of Complaint having come on to be heard, and the same having been duly heard, and the Court having made and filed an Opinion and Findings in relation thereto, on motion of Rothe and Zwerdling, and Harold Goodman of Counsel,

It Is Ordered that, pursuant to said findings and opinion, the said defendant's motion to dismiss be, and the same hereby is denied, and the intervention as a party-defendant of Eugene F. Black, Attorney General, having been noted,

It Is Further Ordered that the said defendants, James N. McNally, as Prosecuting Attorney for said County of Wayne, and Eugene F. Black, as Attorney General of the State of Michigan, be and they hereby are, pending this suit, and until the further order of the Court, restrained and enjoined from instituting and proceeding further in any prosecution involving alleged violations of the election requirements of Section 9a, Act No. 318, Public Acts of 1947.

Theodore J. Richter, Circuit Judge.

A True Copy.

Edgar M. Branigin, Clerk, by H. Shedd, Deputy Clerk.

[fol. 68] IN CIRCUIT COURT OF WAYNE COUNTY

MOTION TO MODIFY ORDER GRANTING TEMPORARY INJUNCTION—Filed June 29, 1948

Now comes Eugene F. Black, Attorney General of Michigan, one of the parties defendant in the above cause, and moves the Court to modify its Order of May 27, 1948,

granting a Temporary Injunction in the above cause for the following reasons:

1. That the said Order as signed and filed is too broad in its scope and exceeds the powers and jurisdiction of the Court and was, therefore, inadvertently entered in its present form;

2. That the said Order Granting Temporary Injunction is not limited in its language and scope as it should be to the non-prosecution of the plaintiffs in said cause in the particular controversy before the Court, which is the only matter upon which the Court has jurisdiction to act;

3. That the effect of said Order as entered is to practically nullify the powers of the State of Michigan and its duly authorized Agencies in all labor controversies, some of which have arisen since the date of said Order and others of which may arise in the immediate future, and said Order is therefore entirely beyond the powers and jurisdiction of this Court.

Petitioner Therefore Prays that the present Order in the above cause dated May 27, 1948, granting Temporary Injunction, be modified to conform to the powers and jurisdiction of the Court by restricting the language and [fol. 69] scope of said Order to the parties and the controversy now before said Court.

Eugene F. Black, Attorney General of Michigan, One of the Defendants in said cause, by Ben H. Cole, Assistant Attorney General.

Dated: June 28, 1948.

In Circuit Court of Wayne County

Answer of Eugene F. Black, Attorney General of Michigan to Amended Bill of Complaint—Filed July 2, 1948

Eugene F. Black, Attorney General of Michigan, one of the defendants in the above entitled cause, for answer to the Amended Bill of Complaint says:

1. The defendant avers that he has no knowledge or information sufficient to form a belief as to the allegations in paragraph "1" that the Union there named is a voluntary association and is a Labor Union, and neither

admits nor denies the number of its members employed by the Chrysler Corporation in the County of Wayne, or as to the name by which said organization is known; neither admits nor denies the names or capacities of the officers thereof, or the capacity in which any officer appears in the Bill of Complaint, and neither admits nor denies that any officer appears in behalf of 1776 factory employees of said corporation, or that the said officer has been authorized in writing by said employees to sign [fol. 70] the Amended Bill of Complaint in this cause to prosecute this suit in their behalf, and neither admits nor denies the names or capacities or relationship of the Chrysler Corporation to other individuals named in said paragraph.

2. Defendant admits that James N. McNally is the duly elected and qualified Prosecuting Attorney for the County of Wayne, Michigan, and has the duty of conducting prosecutions for crime within the jurisdiction of the State in said County, but as to the duty of the Prosecutor to initiate prosecution defendant says that such alleged duty is a matter of law to be determined by the applicable statutes, and not by the assertion of the plaintiffs. Further answering said paragraph, defendant admits that he is the Attorney General of State of Michigan and authorized to intervene in any action, as stated in said paragraph.

3. Defendant neither admits nor denies the allegations in paragraph "3" as to the desires of the plaintiffs and avers lack of knowledge or information sufficient to form a belief as to such allegations, and denies the existence of rights alleged by plaintiffs to urge by speech and other forms of communication in said County that employees of the Chrysler Corporation shall go on strike and remain on strike without such strike being first approved as required by statute, until a collective bargaining agreement is reached concerning wages and compensation in respect to their labor, and state affirmatively that the admitted conduct of the plaintiffs in the assertion and exercise of such alleged rights is in direct violation of the statute referred to in said paragraph, and in direct violation of the laws of this State.

4. Defendant admits that the statute cited in paragraph "4" makes such a strike unlawful unless approved as [fol. 71] stated, and as to the balance of the paragraph states that the statute speaks for itself.

5. Defendant neither admits nor denies, but avers lack of knowledge or information sufficient to form a belief as to the existence of a dispute between the members of the U.A.W. and the Chrysler Corporation as alleged in said paragraph, and neither admits nor denies but avers lack of knowledge or information sufficient to form a belief that the State Board of Labor Mediation has exhausted efforts to mediate, and admits that under its duty provided by law and the said State Board of Labor Mediation did provide for an election concerning the right for said employees to strike, which provision for an election by said Board has been unlawfully ignored by said plaintiffs.

6. Defendant avers lack of knowledge or information sufficient to form a belief, and therefore neither admits nor denies the allegation in paragraph "6" that about 10% of the employees of said corporation in the County of Wayne eligible to vote are non-members of said Union.

7. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies that the U.A.W. has upwards of 500,000 members employed in factories in the State of Michigan, and that upwards of 200,000 of such members are residents of the County of Wayne. Further answering said paragraph, defendant denies that said Union, its members or other plaintiffs individually and in association, have any right to urge strike action, instigate strikes, call strikes, and request the aid of others in such strike projects, free from the control of such matters, provided for in the statutes of the State of Michigan, and particularly the statute cited in said paragraph insofar as said statute makes unlawful and penalizes such activities.

[fol. 72] 8. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies that subsequent to the demand for an election by the State Board of Mediation as set forth in paragraph "5" and while said election was pending under

the law, the plaintiffs urged that the employees of said Chrysler Corporation should go out on strike, and did cause a strike to be called pending said election, or that the officers of said U.A.W. called a strike pursuant to the urging and instigation of these plaintiffs, and admits that a strike was put into effect, but denies knowledge or information sufficient to form a belief, and neither admits nor denies the manner, method and instigation thereof. Further answering said paragraph, defendant avers lack of knowledge or information sufficient to form a belief, and therefore neither admits nor denies that in the instigation, on calling and putting into effect said strike there participated substantially all of the U.A.W. members employed by said corporation.

9. Defendant avers lack of knowledge or information sufficient to form a belief, and therefore neither admits nor denies the specific application of any provisions of the so-called National Labor Management Act to the employer—employee relations of the plaintiffs with said corporation, and for the same reason neither admits nor denies that said corporation and plaintiffs are engaged in commerce within the meaning of said Act, and further states that this being a question of law further answer is unnecessary.

10. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies that the Chrysler Corporation operates plants in a number of states, and avers the same as to the [fol. 73] allegations as to the collective bargaining unit as alleged in said paragraph, and avers the same as to an alleged collective bargaining contract with said corporation.

11. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies that the requirements and conditions of the National Labor Management Act have been complied with in connection with the alleged existing wage dispute, and states the same as to written notice by the U.A.W. upon the corporation, and states the same as to the alleged offer to meet and confer with said corporation for the purpose of negotiating, and states the same as to its alleged notice to the Federal Mediation and Conciliation Service, and states the same as to continuance in full

force and effect of the terms and conditions of an alleged existing contract, and states the same as to the alleged notice upon the State Board of Labor Mediation as alleged in said paragraph.

12. Defendant admits that James N. McNally, Prosecuting Attorney of Wayne County, and this defendant, as Attorney General of the State of Michigan, have threatened to enforce the penal provisions of the statutes and laws of this State against violators of said statutes and laws.

13. Defendant denies that Section 9(a) of Act. No. 318 of the Public Acts of 1947 is unconstitutional and denies the statement in sub-division (a) of said paragraph that said statute deprived the plaintiffs of the right to associate together for the purpose of mutual aid and assistance in strike action against their employers, and denies that said statute deprives the plaintiffs of due process of law contrary to Sec. 16 of Article II of the Constitution of Michigan, and the 14th Amendment to the Constitution of [fol. 74] the United States, and in contravention of Sec. 4, Article II of the Constitution of Michigan that said statute deprives the plaintiffs of the liberty of speech.

Answering sub-division (b), defendant admits that the statute in question provides for a majority vote of the persons in a collective bargaining unit in regard to strike action, and denies that such provision is not due process contrary to the Constitutions of the State and Nation.

Answering sub-division (c) of said paragraph, defendant denies that said statute deprives the plaintiffs of their right for liberty to contract, singly or collectively, concerning terms of employment, and denies that said employees are deprived of any constitutional rights as alleged.

Answering sub-division (d) of said paragraph, defendant denies that the provision for a majority vote impairs the right of representation and collective bargaining possessed by the U.A.W. and its locals; denies that it assumes to transfer these powers and rights to a majority in a collective bargaining unit, except as stated in said statute, and denies that said majority is empowered to take any action contrary to the Commerce Clause of the United States Constitution.

14. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies the allegation, that the U.A.W. brings this action in its own behalf, in behalf of its constituent locals, and its individual members.

15. Defendant denies that unless granted the relief prayed, the plaintiffs will suffer irreparable injury in respect to their constitutional rights; admits that if said plaintiffs or [fol. 75] others violate the laws of the State of Michigan they will be subjected to prosecution; denies that multiplicity of suits will occur, and denies that the alleged jeopardy constitutes a coercion, or any impairment of plaintiffs' constitutional rights of freedom of speech, freedom of association, and freedom to take strike action in concert with others for proper and lawful objects, not only in the present dispute but in all future bargaining affecting U.A.W. members, and denies that plaintiffs are without adequate remedy save in a court of equity. Further answering said paragraph, defendant says that all of the alleged rights of the plaintiffs are fully and adequately protected by the existing statute complained of, and that no lawful conduct on the part of the plaintiffs or any other person is the subject of past, present, or future threats by either of the defendants to this cause.

Eugene F. Black, Attorney General of Michigan; by
Ben H. Cole, Assistant Attorney General.

Dated: July 2, 1948.

Duly sworn to by Ben H. Cole. Jurat omitted in printing.

[fol. 76] In Circuit Court of Wayne County

Answer of Defendant James N. McNally—Filed July 2, 1948

Now comes defendant James N. McNally in the above entitled cause and makes answer to plaintiffs' bill of complaint and says:

1. The defendant not having personal knowledge of the matters set forth in paragraph one of plaintiffs' bill of complaint, neither admits nor denies the same but leaves plaintiffs to their proofs.

2. In answer to paragraph two, defendant admits that he is Prosecuting Attorney for the County of Wayne, State of Michigan, and in further answer to said paragraph says that his duties as such are prescribed by the statutes of the State of Michigan and defendant James N. McNally admits the allegations in paragraph two in reference to Eugene F. Black, Attorney General of the State of Michigan.

3. The defendant not having personal knowledge of the "desires" of the plaintiffs, as alleged in the first sentence of paragraph three, neither admits nor denies the allega-
[fol. 77] tions therein set forth. In answer to the remainder of said paragraph three, the defendant denies the same.

4. The defendant admits the substance of paragraph four. However, in further answer to said paragraph states that the statutes of the State of Michigan speak for themselves.

5. The defendant not having personal knowledge of the matters set forth in paragraph five, neither admits nor denies the same but leaves plaintiffs to their proofs.

6. The defendant not having personal knowledge of the matters set forth in paragraph six, neither admits nor denies the same but leaves plaintiffs to their proofs.

7. The defendant not having personal knowledge of the matters alleged in the first sentence of paragraph seven, neither admits nor denies the same but leaves plaintiffs to their proofs. The defendant denies the rights claimed by the plaintiffs asserted in the remainder of said paragraph seven, which are in violation of the statutes of the State of Michigan.

8. The defendant not having personal knowledge of the matters set forth in paragraph eight, neither admits nor denies the same but leaves plaintiffs to their proofs.

9. The defendant not having personal knowledge of the matters set forth in paragraph nine, neither admits nor denies the same but leaves plaintiffs to their proofs.

10. The defendant not having personal knowledge of the matters set forth in paragraph ten, neither admits nor denies the same but leaves plaintiffs to their proofs.

11. The defendant not having personal knowledge of the matters set forth in paragraph eleven, neither admits nor denies the same but leaves plaintiffs to their proofs.

[fol. 78] 12. In answer to paragraph twelve, the defendant James N. McNally admits that he will prosecute all persons who in said county violate the penal provisions of Act No. 314 of the Michigan Public Acts, 1947.

13. The defendant denies paragraph thirteen and each and every sub paragraph thereunder.

14. The defendant not having personal knowledge of the matters set forth in paragraph fourteen, neither admits nor denies the same but leaves plaintiffs to their proofs.

15. The defendant denies the allegations contained in paragraph fifteen.

George A. Gray.

Duly sworn to by George A. Gray. Jurat omitted in printing.

[fol. 79] In Circuit Court of Wayne County

Stipulation to Advance—Filed July 6, 1948

On behalf of all of the parties to said cause, the undersigned, their respective attorneys, hereby stipulate that said cause may be advanced for immediate hearing.

Rothe and Zwerdling, Harold Goodman, Attorneys for Plaintiffs.

James N. McNally, Eugene Black, Attorneys for Defendants.

Dated: July 6, 1948.

In Circuit Court of Wayne County

Order to Advance—Filed July 6, 1948

This cause coming on to be heard on motion of (plaintiff) (defendant) to advance.

It is ordered that the said motion be and the same is hereby (granted) and said cause be placed on the Chancery Pre-trial and reference docket.

(Signed) I. W. Jayne, Presiding Circuit Judge.

Filed July 6, 1948, Edgar M. Branigin, Clerk. By (Signed) Demcheck.

[fol. 80] In Circuit Court of Wayne County

Motion for Leave to File Supplemental Bill of Complaint—Filed July 19, 1948

Now come the plaintiffs by counsel and move that leave be granted to file a Supplemental Bill of Complaint by adding Paragraphs 16, 17, and 18 to the Amended and Supplemental Bill of Complaint, as herewith proffered, and to join as parties plaintiffs Michael Lacey and Blaine Marrin.

This motion is based upon the pleadings in said cause and the Supplemental Bill of Complaint herewith proffered.

Rothe & Zwerdling, Attorneys for Plaintiffs. Harold Goodman, of Counsel.

Dated: July 16, 1948.

In Circuit Court of Wayne County

Order Allowing Filing of Supplemental Bill of Complaint—Filed July 19, 1948

At a session of said Court held in the County Building in the City of Detroit, this 19th day of July, 1948, Present: The Honorable Theodore J. Richter, Circuit Judge.

The plaintiffs' Motion to File a Supplemental Bill of Complaint and to add additional parties plaintiffs having

been made in open Court in the course of hearing, and the same having been duly heard,

It is ordered that said proffered Supplemental Bill of Complaint may be filed, and Michael Lacey, Harry Southwell and Blaine Marrin may be joined as parties plaintiffs.

[fol. 81] It is further ordered that the defendants shall have a reasonable time to answer.

Theodore J. Richter, Circuit Judge.

(A true copy.)

Edgar M. Branigin, Clerk, by Dan Wojcik, Deputy Clerk.

In Circuit Court of Wayne County

Supplemental Bill of Complaint—Filed July 19, 1948

The plaintiffs, for the purpose of bringing before the Court matters in connection with their Bill of Complaint and related thereto occurring subsequent to the filing thereof, hereby supplement the allegations of the Amended and Supplemental Bill of Complaint by adding the paragraphs as follows:

16. There have arisen in said County wage disputes involving Gray—Marine Motor Co., Warner Aircraft Corporation, Champion Spark Plug Co., Timken Detroit Axle Co. and about 100 tool and die shops. It is impractical and unnecessary to enumerate specifically each one but two are here specifically set forth as typical of the facts in respect to all, to-wit, Robbins and England, and Vinco Corporation. Said concerns are engaged in interstate commerce and they and their employees are subject to the National Labor Management Relations Act. The employees of said plants are members of the U.A.W. In said plants, the plaintiffs, Emil Mazey, Norman Matthews, Michael Lacey, Harry Southwell and Blaine Marrin called strikes now in effect and unsettled while an election pursuant to Sec. 9 of Act 318 P. A. 1947 was pending.

17. Michael Lacey, Harry Southwell and Blaine Marrin hereby join in this suit as parties plaintiffs, adopt in [fol. 82] their behalf all of the allegations of the Amended and Supplemental Bill of Complaint.

18. The plaintiffs fairly and adequately represent a class too numerous to bring before the Court and this class includes the members of the U.A.W. and employees in the State of Michigan and County of Wayne generally who may be engaged in occupations affecting interstate commerce. The threatened enforcement of the election requirements of Act 318 P. A. 1947 applies to all such employees in said County at all times; and the plaintiffs and great numbers of U.A.W. members will continue to call and instigate strikes without first complying with the election requirements of said Act 318 Public Acts of 1947 in good faith belief that said provisions are void.

The International Union of United Automobile, Aircraft and Agricultural Implement Workers of America; C. I. O. Emil Mazey, Secretary, Treasurer, and Acting President. Emil Mazey, individually, and in behalf of 1776 employees of Chrysler Corporation and the members of the U.A.W. Michael Lacey, Blaine Marrin, Harry Southwell, Norman Matthews, Arthur Grudzen, Alex Barbour, [fol. 83] Wilson Kuck, Ralph Fileccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, William T. Archer. Rothe & Zwerdling, Attorneys for Plaintiffs. Harold Goodman, Of Counsel, 526 Dime Building, Detroit 26, Michigan.

State of Michigan,
County of Wayne, ss:

On this 16th day of July, 1948, personally appeared before me the above named Emil Mazey, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Fileccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, Harry Southwell, Michael Lacey and Blaine Marrin and William T. Archer, who being duly sworn, depose and say that they have read the foregoing Amended and Supplemental Bill of Complaint by them subscribed, know the contents thereof, and that the same are true, except as to those matters alleged to be upon information and belief, and these they believe to be true. Further deposes the said Emil Mazey that he is Secretary, Treasurer, and Acting President of the said International Union of United Automobile, Aircraft, and

Agricultural Implement Workers of America, C.I.O., and [fol. 84] is authorized to sign this Amended and Supplemental Bill of Complaint in behalf of said Union, and that he is specially authorized to prosecute this action on behalf of 4,776 Chrysler employees.

William Mazey, Notary Public, Wayne County, Michigan.

My Commission expires 10-29-50.

In Circuit Court of Wayne County

Answer of Eugene F. Black, Attorney General of the State of Michigan, One of the Defendants in the Above Cause, to Supplemental Bill of Complaint — Filed August 5, 1948

The Defendant, Eugene F. Black, Attorney General of the State of Michigan, reserving the benefit of his objection to the Order of the Court allowing the filing of a Supplemental Bill of Complaint, which objection was made in open court upon the hearing of Plaintiffs' Motion for Leave to File Supplemental Bill of Complaint, for answer to said Supplemental Bill of Complaint says:

16. The Defendant avers that he has no knowledge or information sufficient to form a belief and therefore neither admits nor denies that wage disputes have arisen in said County involving Gray-Marine Motor Co., Warner Aircraft Corporation, Champion Spark Plug Co., Timken-Detroit Axle Company, and about 100 tool and die shops. For the same reason Defendant neither admits nor denies the practicality or necessity of enumerating such disputes, and for the same reason neither admits nor denies that Robbins and England, and Vinco Corporation are typical of the facts in respect to all of such disputes. Defendant, for the same reason, neither admits nor denies that said con- [fol. 85] cerns are engaged in interstate commerce and neither admits nor denies that they and their employees are subject to the National Labor Management Relations Act. Defendant, for the same reason, neither admits nor denies that the employees of said plants are members of the U.A.W. Defendant admits, upon information and belief,

that the Plaintiffs, Emil Mazey, Norman Matthews, Michael Lacey and Blaine Marrin, called strikes while an election was pending pursuant to Sec. 9 of Act 318, P.A. 1947.

17. Defendant avers, lack of knowledge or information sufficient to form a belief as to the desires of the individuals named in said paragraph 17, and neither admits nor denies, for the same reason, their capacity to join this suit as parties plaintiff.

18. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies the claim that the Plaintiffs represent a class, including members of the U.A.W. or employees in the State of Michigan engaged in occupations affecting interstate commerce. As to the balance said paragraph no statement of fact is made requiring answer.

Eugene F. Black, Attorney General of Michigan. By Ben H. Cole, Assistant Attorney General.

Dated: August 3, 1948.

[fol. 86] In Circuit Court of Wayne County

Answer of James N. McNally to Plaintiffs' Second Supplemental Bill of Complaint—Filed August 24, 1948

Now comes James N. McNally and makes answer to plaintiffs' second supplemental bill of complaint, however saving and reserving to himself all of his objections to the propriety of the procedure allowing the filing of said supplemental bill of complaint, and says:

The defendant James N. McNally, not being informed as to the matters set forth in Paragraphs 16, 17, and 18 of plaintiffs' second supplemental bill of complaint, neither admits nor denies the same but leaves plaintiffs to their proofs.

James N. McNally, Prosecuting Attorney of Wayne County, by (Signed) J. Lynn Fewlass, Assistant Prosecuting Attorney.

Dated: July 17, 1948.

In Circuit Court of Wayne County

Opinion of the Court—Filed August 3, 1948

The plaintiffs, the International Union of Automobile, Aircraft and Agricultural Implement Workers, C.I.O., generally known as the U.A.W., C.I.O., Emil Mazey, its acting President, for himself, the Union members, and for 1776 Chrysler employees, together with other Union officers, and other industrial employees who were leaders in recent strikes, bring this bill in equity to restrain the Prosecuting Attorney of Wayne County, and the Attorney General, [fol. 87] who appeared by intervention, from taking criminal proceedings against the members of the U.A.W., C.I.O., based upon alleged violations of those provisions of Act 318, P. A. 1947, which declared unlawful strikes instituted without first securing approval by a majority of the employees in the State in the collective bargaining unit of the plant involved in an election held in accordance with the statute and which subject to criminal penalties persons who call or instigate a strike while the election is pending. The statute also provides for the civil remedies of injunction and damages on account of strikes so made unlawful.

The case was fully tried, and exhaustive and able briefs were filed.

On the part of the plaintiffs it is claimed that their rights of liberty and property are impaired contrary to Sections 4 and 16, Article II of the Michigan Constitution, and the due process clause of the Fourteenth Amendment of the Federal Constitution, and that the provisions complained of are repugnant to the collective bargaining rights granted to the unions under the Taft-Hartley Act and to the prescriptions of that law in support of these rights.

The evidence shows that there have been and will be numerous violations of the election requirements of Act 318 P. A. 1947 on the part of the plaintiffs and U.A.W. members, and by the very terms of the Statute it would seem that prosecutions can be, and if the statute is valid, should be sufficiently vigorous and extensive to prevent a strike not authorized by the statute. Consequently, the plaintiffs may complain not merely of a specific instance in which their rights may be impinged, but "of the pervasive threat [fol. 88] inherent in its (the statutes) existence." Thorn-

hill v. Alabama, 310 U. S. 88, 97. Obedience to the statute involves the continuous sacrifice of the rights claimed. In this situation the jurisdiction of equity to determine the validity of this law is peculiarly applicable, for if it is invalid it involves a continuous impairment of the right to associate in common action to withhold labor as a means of obtaining a better wage bargain. The rights involved are of equal dignity with those to conduct a business. Against the serious claim that the statute on its face impairs fundamental civil rights, a determination of that claim by a court of equity is most appropriate.

The defendants in their briefs contend only that the right to strike is not absolute, but may be subjected to limitation. But the briefs submitted in their behalf are noteworthy, in that they disclose no case which approves the qualification in question here. On the other hand, counsel for the plaintiffs narrow their claims down to the specific limitation here involved. They insist that there is not involved the power of the state to qualify the right to strike for a purpose which might be made unlawful, or in a business coupled with a public interest, nor in the face of some public emergency. Other sections of the statute deal with hospitals and public utilities and provide for compulsory arbitration of wage disputes in such cases. There is in question here the sweeping terms of the statute requiring a majority vote in the bargaining unit as a condition to the lawfulness of a strike in ordinary industry. The statute applies to all strikes without distinction as to purpose and to all occasions without regard to emergency. The question is whether the right to strike for any group of employees may be made subject to the approval of a majority of the employees in the collective bargaining unit.

[fol. 89] This question, I am persuaded, must be answered "No." It is not inherently reasonable that the right should exist with majority approval and be denied without it. So long as wage determination is a matter of bargaining between employers and employees, it is unreasonable to prevent by coercion of law any work stoppage by two or more employees acting in concert if they are dissatisfied with the conditions of employment. The right of a working man to induce his fellow employee to quit work with him for proper purposes is individual. He can scarcely be deprived of this right in all cases where he or others fail to

persuade a majority to act with them. In Beck v. Teamsters Protective Union, 118 Mich. 497, the Court stated:

> "So, also, the laborers have the right to fix a price upon their labor and to refuse to work unless that price is obtained. Singly, or in combination, they have this right. They may organize in order to improve their condition and secure better wages. They may use persuasion to induce men to join their organization or to refuse to work, except for an established wage."

That these rights are within the scope of constitutional protection is well expounded by the Supreme Court of Alabama in Hotel and Restaurant Employees Alliance v. Greenwood, 249 Ala. 265, 30 So. 2d 696. The numerous authorities therein cited rendered it unnecessary to repeat them here. The point is forcefully made that freedom of speech in respect to labor disputes is bound up with the necessary implication of freedom to carry into action what is urged.

> [fol. 90] "It would be but a hollow principle to say a union is free to advertise a labor dispute by picketing but may not strike to enforce its demands. Scofes v. Helmer, 205 Ind. 596, 187 N. E. 662, 664."

Freedom of speech includes the right to induce others not to buy merchandise or perform services. Carlson v. California, 310 U. S. 106, 112.

In Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810, statutory provisions comparable with those in question here was held unconstitutional, and a three judge United States District Court held sections of the 1943 Kansas Labor Law substantially identical with the provisions here involved, to be unconstitutional. Stapleton v. Mitchell, 60 Fed. Suppl. 51. The Oregon Supreme Court held to be unconstitutional a law restraining picketing unless authorized by a majority of the employees in American Federation of Labor v. Bain, 165 Ore. 193, 206.

These decisions, which appear in no manner contradicted or qualified by others, impel me to hold that so much of Act 318 Public Acts of 1947 which require a strike vote and penalize the calling or instigating strikes while an election is pending are void as contravening the due process clauses of the State and Federal Constitutions.

It has been strongly urged that these provisions are repugnant to the Labor Management Relations Act. (Pub. L. No. 101, 80th Cong. 1st Sess.) generally known as the Taft-Hartley Act. While the states retain their fundamental police powers in matters of local concern even in the face of Federal Legislation dealing with matters affecting commerce, this legislation qualifies the collective bargaining [fol. 91] provisions of the federal Act in two important ways. The collective bargaining unit under the federal Act may extend to and include plants of a single industry in more than one state. Thus the collective bargaining under federal prescription is affected by an affirmative or negative strike vote in Michigan. Furthermore, the federal Act grants collective bargaining rights. Sec. 9(a) provides that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

The exercise of collective bargaining rights is controlled by the federal law, and this control cannot be impaired or modified by the states. Under existing conditions it is impossible to dissociate the strike from the process of collective bargaining.

The question of representation of the bargaining unit by the majority and the procedure conferring bargaining rights are all matters covered by this law, and any revocation of authority must be left to the Congress. The State cannot interfere with the representation policies provided by the Taft-Hartley Act.

A decree in accordance with this opinion, declaring unconstitutional the election requirements of the Bonine Tripp Act and enjoining the defendants from enforcing criminally [fol. 92] a violation thereof in respect to the plaintiffs may be prepared and submitted.

Theodore J. Richter, Circuit Judge.

Dated: August 2, 1948.

A True Copy, Edgar M. Branigin, Clerk; By Don Wojcik, Deputy Clerk.

IN CIRCUIT COURT OF WAYNE COUNTY

DECREE—Filed August 11, 1948

At a session of said Court held in the County Building in the City of Detroit, this 11th day of August, A. D., 1948. Present: The Honorable Theodore J. Richter, Circuit Judge.

This cause having come on to be heard upon the Bill of Complaint, Amended and Supplemental, and the Answers thereto and the Court having been fully advised in the premises, and it appearing that Section 22 of Act 318 Public Acts of 1947 subjects to criminal penalties any person who either individually or as one of a group of persons instigates a strike or who shall call or cause a strike to be placed in effect while an election is pending under Section 9; and Sections 9, 9a, and 9b require with respect to ordinary industrial enterprises not hospitals or public utilities the holding of an election for the purpose of taking a strike vote of the employees in the collective bargaining unit of the industries defined in said statute, and prohibit and make un- [fol. 93] lawful any strike unless in such strike vote the same shall be approved by the majority of the employees in said collective bargaining unit and said strikes not so approved may be the subject of legal and equitable remedies as provided in Section 22a; and the Court having filed a written opinion determining the material facts and the applicable law; and that the rights and protection sought by the plaintiffs are in respect to subjects of collective bargaining, wages and conditions of employment and election requirements in the settlement of jurisdictional disputes pursuant to Section 9c are not involved; for the reasons in said opinion stated, upon motion of Rothe and Zwerdling, Harold Goodman of Counsel, attorneys for plaintiffs,

It is ordered adjudged, and decreed, as follows:

1. That the provisions of Act 318 Public Acts of 1947 requiring the taking of a strike vote and making a strike unlawful unless the same shall first be approved by a majority vote in the collective bargaining unit, and subjecting to criminal prosecution any person who either individually or as one of a group instigates a strike or who shall call or cause a strike to be placed in effect while an election is pending under Section 9 of said Act, except insofar as the said provisions are or may be applied in respect to jurisdictional strikes as provided in Section 9c, are null

and void as in contravention of Art. II, Secs. 4 and 16 of the Constitution of the State of Michigan, of the 14th Amendment of the United States Constitution, and in application to any industry affecting interstate commerce, (in view of the National Labor Management Relations Act) of Art. I, Sec. 8 (3) of the Constitution of the United States.

2. That the defendant, James N. McNally, as Prosecuting Attorney of said County, and Eugene F. Black, as [fol. 94] Attorney General of the State of Michigan, be and they hereby are perpetually enjoined from prosecuting in said County of Wayne the plaintiffs, their officers, agents, and members for any alleged violations of the provisions of Act 318 Public Acts of 1947 declared unconstitutional in Paragraph 1 hereof.

3. Nothing herein contained shall prejudice or prejudge the application of Act 318 Public Acts of 1947 to hospitals or public utilities or jurisdictional strikes nor shall any part or clause of said Act other than those within the scope of Paragraph 1 hereof be considered as in any manner affected by this decree.

Theodore J. Richter, Circuit Judge.

A True Copy, Edgar M. Branigin, Clerk; By Don Wojcik, Deputy Clerk.

In Circuit Court of Wayne County

Notice of Entry of Decree and Proof of Service—Filed August 12, 1948

To: Eugene F. Black, Attorney General of Michigan, and Ben H. Cole, Assistant Attorney General, 1900 Cadillac Square Building, Detroit 26, Michigan, —and—

[fol. 95] To: James N. McNally, Prosecuting Attorney, J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys, 508 Wayne County Building, Detroit 26, Michigan.

Please Take Notice that the Decree in the above entitled cause was entered this 11th day of August, 1948.

Yours, etc., Rothe & Zwerdling, Attorneys for Plaintiffs; Harold Goodman, Of Counsel.

Dated: August 11, 1948.

In Circuit Court of Wayne County

Order Extending Time to Settle Case on Appeal—Filed August 31, 1948

At a session of the Court, held at the Court House in the city of Detroit, on the 31st day of August, A. D. 1948.

Present: Honorable Theodore J. Richter, Circuit Judge.

Upon the filing of the within Stipulation and the court being fully advised in the premises:

It Is Ordered that the time to settle the record on appeal in the above cause be and the same is hereby extended to September 2nd, 1948.

Theodore J. Richter, Circuit Judge.

[fol. 96] In Circuit Court of Wayne County

Claim of Appeal—Filed August 11, 1948

Defendant, Eugene F. Black, Attorney General of the State of Michigan, hereby claims an appeal from the Decree entered in said cause on August 11, 1948, by the Circuit Court for the County of Wayne, In Chancery, Honorable Theodore J. Richter, presiding.

Appellant takes general appeal.

Eugene F. Black, Attorney General of Michigan, By Ben H. Cole, Assistant Attorney General, 1900 Cadillac Square Bldg., Detroit 26, Michigan, Woodward 2-5083.

Dated: August 11, 1948.

In Circuit Court of Wayne County

Certificate of Court Reporter—Filed August 23, 1948

I hereby certify that a transcript of the testimony taken in the above entitled cause has been ordered by J. Lynn Fewlass, Esq., attorney for defendant James N. McNally; that payment for same has been secured, and that same will be furnished as soon as possible.

Leonard C. Aumann, Official Reporter, Wayne Circuit Court.

Dated at Detroit, Michigan, August 4, 1948.

[fol. 97] In Circuit Court of Wayne County

Claim of Appeal to the Supreme Court of Michigan
Filed August 23, 1948

James N. McNally, Prosecuting Attorney for the County of Wayne, one of the defendants in the above entitled cause, hereby claims an appeal from the decree of the Circuit Court for the County of Wayne in Chancery, (Hon. Theodore J. Richter, Trial Judge) as filed and entered in this cause on August 11, 1948.

This defendant and appellant takes a General Appeal.

James N. McNally, Prosecuting Attorney for County In Propria persona; J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys; Attorneys for Defendant and Appellant James N. McNally; By J. Lynn Fewlass, Business address: 508 Wayne County Bldg., Detroit 26, Michigan.

Dated: August 23, 1948.

[fol. 98] In Circuit Court of Wayne County

Notice of Presentation and Settlement of Settled Case on Appeal—Filed September 2, 1948

To: Rothe & Zwerdling, 3635 Barlum Tower, Detroit 26, Michigan; Harold Goodman, 526 Dime Building, Detroit 26, Michigan, Attorneys for Plaintiffs and Appellees, and Ben H. Cole, Assistant Attorney General, 1900 Cadillac Square Building, Detroit 26, Michigan, Attorney for Defendant and Appellant Eugene P. Black.

Take Notice that the annexed proposed Settled Case on Appeal, with Reasons and Grounds for Appeal of Defendant McNally attached thereto, will be presented for disposition and settlement to the Trial Judge, Honorable Theodore J. Richter, in his courtroom in the Wayne County Building, City of Detroit, Michigan, on the 31st day of August, 1948, at 9:00 o'clock, A. M., on said day, or as soon thereafter as counsel may be heard.

Dated: August 27th, 1948.

James N. McNally, Wayne County Prosecuting At-
[fol. 99] torney, In Propria Persona and by J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant and Appellant McNally, By J. Lynn Fewlass.

In Circuit Court of Wayne County

Stipulation for Extension of Time to Settle Record
Filed August 31, 1948

It Is Hereby Stipulated by and between the attorneys of record for the parties in the above entitled cause, that the time for settling record be and the same is hereby extended to September 8, 1948.

Dated: Detroit, Michigan, August 27, 1948.

Rothe & Zwerdling, Attorneys for Plaintiff; Harold Goodman, Of Counsel for Plaintiff, By Harold Goodman. James N. McNally, By Philip A. McHugh, Assistant Prosecuting Attorney. Eugene F. Black, Attorney General, By Ben H. Cole, Assistant Attorney General.

[fol. 100] In Circuit Court of Wayne County

Defendants' Reasons and Grounds for Appeal

Now comes James N. McNally, Prosecuting Attorney for Wayne County, in propria persona, and by J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys, and claims the following reasons and grounds for appeal:

1. The court erred in not granting the motion of defendant James N. McNally to dismiss plaintiffs' bill of complaint for the reasons set forth therein.

2. The court erred in granting leave to plaintiffs to file in this cause on May 29, 1948, an Amended and Supplemental Bill of Complaint and to file on July 19, 1948, a Second Supplemental Bill of Complaint.

3. The court erred in entertaining plaintiffs' bill and supplemental bills in equity to enjoin the prosecution of criminal proceedings. (Findings and Opinion, p. 1, par. 2 and 3; p. 2, par. 3).

4. The court erred in not holding that plaintiffs have a full, adequate and complete remedy at law.

5. The court erred in holding (Opinion, p. 3, par. 1 and 2) that the right to strike for any group of employees may not be made subject to the approval of a majority of the

employees in the collective bargaining unit, as provided in Section 9a of the Bonine-Tripp Act, (Act No. 318, P. A. 1947, amending the Michigan Labor Mediation Act; Act No. 176, P. A. 1939; 13 MSA 17.454, 1947 Cum. Supps., p. 222).

6. The court in holding (Opinion, p. 4 and 5) that so much of Act. No. 318, P. A. 1947 as requires a majority strike [fol. 101] vote and penalizes the calling or instigating of strikes while an election is pending, (Sections 9, 9a, 9b and Section 22) are void as contravening the due process clauses of the State and Federal constitutions, and comprise a violation of the full freedom rights to speech and due process of law, guaranteed to individuals under Article II, Sections 4 and 16 of the Michigan Constitution (1908), and the Fourteenth Amendment of the United States Constitution, and comprise a violation, likewise, of the Commerce Clause of the United States Constitution. (Article I, Sec. 8 (3)).

7. The court erred in holding (Opinion, p. 5) that the above cited provisions of Act No. 318, P. A. 1947 are repugnant to the National Labor Relations Management Act, 1947, (29 U.S.C.A., 141, et seq.; Chap. 120, Public Law 101) generally known as the Taft-Hartley Act.

8. The court erred in holding (Opinion, p. 5) that the collective bargaining unit under the Federal Act is invaded by an affirmative or negative strike vote in Michigan under the Bonine-Tripp Act, Act. No. 318, P. A. 1947.

9. The court erred in not holding that the Michigan Act (Act No. 318, P. A. 1947) comprises a valid constitutional exercise of the State's police power in the field of labor relations.

10. The court erred in not holding that it will not be lightly inferred or assumed that Congress, by the mere passage of an act, has impaired the sovereignty of the states over police matters.

11. The court erred in not holding that under the State's rights as to police power, the Legislature was within its [fol. 102] rights in passing the Bonine-Tripp Act (Act No. 318, P. A. 1947) as an expression of the will of the people on questions of public concern and responsive to local social needs.

12. The court erred in holding, (Opinion, p. 5) that the exercise of bargaining rights is controlled by the Federal law, and that this control cannot be impaired or modified by the states, and in further holding (Opinion, p. 5) that it is impossible to disassociate the strike from the process of collective bargaining.

13. The court erred in not holding that the individual states have the right within the valid exercise of the police power to define use of the union labor's power in calling a strike a crime under prescribed circumstances, and that such restriction upon the power is not a violation of constitutional liberty guaranteed by either the leader or those who desire him to exercise the power.

14. The court erred in not holding that the requirement of the Bonine-Tripp Act (Act No. 318, P. A. 1947, Sec. 9a; 12 M.S.A., Sec. 17.454(10)) of a majority strike vote is a reasonable exercise of the State's police power, due to the injustice comprised in a small fraction of the employees, by voting to strike, causing work stoppage for hundreds of thousands who did not wish to strike. (House of Representatives Report, 245, page 22, April 11, 1947; also, Ludwig Teller on "The Law Governing Labor Disputes and Collective Bargaining," Introduction, Special Supps., 1947).

15. The court erred in not holding that the legislative object embodied in the Bonine-Tripp Act (Act No. 318, P. A. 1947) is reasonable, and that its provisions are in no respect arbitrary, and that the means selected, —majority vote by secret ballot—bear a real and substantial relation [fol. 103] to the object sought to be attained, in fulfillment of the law.

16. The court erred in not holding that a union presumably represents all the employees in the bargaining unit, and that under the law of agency the principal can restrict and control the authority of his agent, and that the State, within its inherent police power, can define and prescribe regulations for the protection of multiple principals, to insure that the union and its officers, as agent, shall be amenable to the collective direction and control of the principal, the employees.

17. The court erred in regarding and holding (Opinion, p. 4) the identification of picketing and strikes with free

speech, and the integration of economic coercion with the fundamental liberty and freedoms protected by the State and Federal constitutions.

18. The court erred in not holding in the case at bar that there exists no conflict between the State Act (Act No. 318, P. A. 1947) and the Federal Act (Taft Hartley Act; the National Labor Management Relations Act, 1947; Chapter 120, public Law 101; 80th Congress, First Session).

19. The court erred in not holding that Congress, in passing the National Labor Management Relations Act, did not expressly or impliedly manifest intent to destroy or exclude State legislation from the phase of labor relations affecting commerce covered by the State act, and that there is no express foreclosure, in the National Labor Management Relations Act, of the State requirement of a strike vote.

20. The court erred in not holding that the traditional right of states to enact police power legislation is invio- [fol. 104] late, unless the intent of Congress to curtail such right is unmistakably clear and manifest, and that it was not the intention of Congress, in enacting the Taft-Hartley Act to interfere with the states in the enactment and administration of their own laws.

21. The court erred in not holding that the strike-vote requirement of the Bonine-Tripp Act (Sec. 9a; 12 M.S.A., Sec. 17. 454(10)) does not infringe upon or conflict with any federally protected right, since no federal protection has been either expressly or impliedly provided in the National Labor Management Relations Act, for the claimed and alleged right of a union officer to instigate and call a strike without the consent of the majority of members of the bargaining unit.

James N. McNally, Prosecuting Attorney for Wayne County, In Propria Persona, and by J. Lynn Fewlass & Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant & Appellant, McNally, By (Signed) J. Lynn Fewlass

[fol. 105] In Circuit Court of Wayne County

Reasons and Grounds for Appeal in Behalf of Defendant Eugene F. Black

Now Comes Eugene F. Black, Attorney General of the State of Michigan, one of the defendants and appellants in the above entitled cause, by Ben H. Cole, Assistant Attorney General, and for his reasons and grounds for appeal says that there is manifest error in the record and proceedings as follows:

1. The court erred in holding that the right of a group of employees in ordinary industry to strike may not legally be made subject by State Law to a majority vote of such employees in a collective bargaining unit as determined by such law. (Act 176, Pub. Acts 1939, as am. by Act 318, Pub. Acts 1947.)

2. The court erred in holding that the provisions of the Labor Mediation Act, as amended, which require a strike vote and penalize the calling or instigating of a strike while such election is pending are void as in contravention of the due process clauses of the State and Federal Constitutions. (U. S. Const. am. 14; Mich. Const. 1908, Art. II, Sec. 16.)

3. The court erred in holding that the strike vote and penal provisions of the Michigan Labor Mediation Act, Id., are void as in contravention of the freedom of speech provisions of the Federal and State Constitutions. (U. S. Const. am. 1, Mich. Const. 1908, Art. II, Sec. 4).

4. The court erred in holding the above provisions of the State Law to be in violation of the Commerce Clause of the Federal Constitution. (U. S. Const. Art. 1, Sec. 8(3)).

[fol. 106] 5. The court erred in holding that the exercise of collective bargaining rights is so controlled by federal law that such control is jurisdictionally exclusive of the exercise of the police powers of the states.

Eugene F. Black, Attorney General of Michigan, Defendant and Appellant; By Ben H. Cole, Assistant Attorney General.

(A True Copy.)

Following the conclusion of the trial and the submission of briefs by counsel for the respective parties hereto, a written Opinion was thereafter, on the 3rd day of August, 1948, filed in this cause by the Trial Judge, Honorable Theodore

J. Richter, after which a Decree, pursuant to the said Opinion, was signed, filed and entered herein on August 11, 1948.

[fol. 107] In Circuit Court of Wayne County

Certificate of the Court

And because the within and foregoing matters and things do not appear of record in this cause, I, the Circuit Judge before whom said case was tried, in pursuance of the statute and rules in such made and provided, and in pursuance of order entered in said cause extending the time to September 15, 1948, in which to present and have settled a Settled Case herein on appeal, Do Hereby Certify that the within and foregoing contains the substance of all the testimony in said cause, and that I have deemed it necessary to a full understanding of said testimony that it be set out by questions and answers to the extent to which the same has been done herein; and that the Reasons and Grounds for Appeal were annexed to said Settled Case at the time the same was signed and certified by me.

Dated: September 2nd, 1948.

(Signed) Theodore J. Richter, Circuit Judge.

O. K.,

(Signed) Harold Goodman, of Counsel for Plaintiffs.

[fol. 108] In Circuit Court of Wayne County

Certificate of Court Supplementing Record on Appeal

Filed December 9, 1948

I, the Circuit Judge before whom said cause was tried, do hereby certify that Exhibit 4, a copy of which is hereto attached, was received in evidence in said cause, and the same is hereby included in the settled case on appeal.

Theodore J. Richter, Circuit Judge.

Dated at Detroit, Michigan, this 9th day of December, 1948.

Approved:

Harold Goodman, Attorney for Plaintiffs; Ben H. Cole, Assistant Attorney General, Philip A. McHugh, Asst. Prosecuting Attorney, Attorney for Defendant, James N. McNally.

Agreement

Between

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

— and —

Local Union No. 3 Local Union No. 7
Local Union No. 47 Local Union No. 51
Local Union No. 140 Local Union No. 227
Local Union No. 230 Local Union No. 371
Local Union No. 375 Local Union No. 490
Local Union No. 685 Local Union No. 705
Local Union No. 961

— AND —

CHRYSLER CORPORATION

dated

APRIL 26, 1947

History of Contract Relationship

Chrysler Corporation and International Union, UAW-CIO, first entered into a collective bargaining agreement in April, 1937. This agreement which covered Union members only was continued in effect until the fall of 1939 when the National Labor Relations Board issued a Certification designating the Union as representative of production and maintenance employees. On November 29, 1939, the Corporation and the Union entered into an agreement which covered all employees in the bargaining unit as determined by the National Labor Relations Board.

On December 10, 1940, and again on June 2, 1941, the Corporation and the Union entered into supplementary agreements to the agreement of November 29, 1939.

On September 10, 1943, the Corporation and the Union entered into a new agreement. This agreement was later amended by supplementary agreements dated November 30, 1944 and January 8, 1945.

On January 26, 1946, the Corporation and the Union incorporated amendments to the previous agreement and further amendments into a new agreement.

On April 26, 1947, the Corporation and the Union entered into the present agreement which is set forth in this booklet.

CHRYSLER CORP. 13

PRINTED IN U.S.A.

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Agreement Entered Into on the 26th Day of April, 1947

Between Chrysler Corporation

(Hereinafter referred to as the "Corporation")

and Local Union No. 7, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 3, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 140, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 47, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 227, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 490, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 51, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 375, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 230, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 371, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 705, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 685, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 961, United Automobile, Aircraft and Agricultural Implement Workers of America,

and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America,

Affiliated with the Congress of Industrial Organizations.

(Said Local No. 7, and said Local No. 3, and said Local No. 140, and said Local No. 47, and said Local No. 227, and said Local No. 490, and said Local No. 51, and said Local No. 375, and said Local No. 230, and said Local No. 371, and said Local No. 705, and said Local No. 685, and said Local No. 961, and said International Union being hereinafter referred to collectively as the "Union.")

I

1. The National Labor Relations Board by Decisions and Certifications of Representatives having found that all the production and maintenance employees of the Corporation at the Chrysler Jefferson, Chrysler Kercheval, Dodge Main, Dodge Forge, Dodge Truck, De-Soto, Highland Park, Amplex-Harper, Plymouth, Evansville, Kokomo, Marysville, Los Angeles and New Castle Plants, excluding foremen, assistant foremen, timekeepers, plant protection employees, office employees, confidential salaried employees, and salaried engineers, and, in addition, excluding at the New Castle Plant only, the employees of Department No. 57 of that plant who are die sinkers or are employed in the manufacture or maintenance of dies used to complete forgings, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, and having certified that International Union, United Automobile Workers of America, affiliated with the C.I.O., now known as International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C.I.O., has been designated and selected by a majority of all the employees of the Corporation constituting said unit as their representative for the purposes of collective bargaining; and that pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the

C.I.O., is the exclusive representative of all the employees constituting said unit for the purpose of collective bargaining in respect to the rates of pay, wages, hours of employment, and other conditions of employment, and whereas almost all employees of the Lynch Road Plant were transferred to the Lynch Road Plant from other Chrysler Corporation Plants in which these employees were represented by the Union, the Corporation and the Union previously agreed that all production and maintenance employees of the Corporation at the Lynch Road Plant, excluding foremen, assistant foremen, timekeepers, plant protection employees, office employees, confidential salaried employees, and salaried engineers, constitute a part of the above stated appropriate unit; the Corporation, pursuant to the requirement of the National Labor Relations Act, and pursuant to the agreement between the Corporation and the Union for the Lynch Road Plant, recognizes International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C. I. O., as exclusive representative of the employees constituting such bargaining unit in accordance with said Decisions, Certifications, and prior agreement for the term of this agreement.

2. The Union recognizes that the Corporation has the exclusive right to manage its plants and direct its affairs and working forces.

3. The Union agrees that it will not for any purpose represent anyone in a supervisory capacity such as superintendents, general foremen, assistant general foremen, foremen or assistant foremen or other supervisors, or other representatives of management.

4. The Corporation will not aid, promote or finance any labor group or organization which purports to engage in collective bargaining or make any agreement with any such group or organization for the purpose of undermining the Union.

5. It is mutually agreed that the term "employee" for the purpose of this agreement shall not include foremen, assistant foremen, plant protection employees, office employees, confidential salaried employees, and salaried engineers.

6. The Union will not cause or permit its members to cause, nor will any member of the Union take part in, any sit-down, stay-in or slow-down in any plant of the Corporation, or any curtailment of work or restriction of production or interference with production of the Corporation. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises until all the bargaining procedure as outlined in this agreement has been exhausted, and in no case until after the negotiations have continued for at least five days and not even then unless sanctioned by the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America. In case a strike shall occur, either before or after all bargaining procedure has been exhausted, this agreement shall terminate at once. The Corporation reserves the right to discipline any employee taking part in any violation of this section of this agreement. The Union agrees that it will not oppose the dis-

charge or discipline of anyone who instigates, leads or induces another employee to take part in any unauthorized strike. The management will not cause or sanction a lockout until all the bargaining procedure as outlined in this agreement has been exhausted, and in no case until after negotiations have continued for at least five days.

II

Bargaining Procedure

1. The number of districts in each plant shall be the present number, unless the number is increased or decreased by agreement between the plant management and the Union. The plant management and the Union may redistrict a plant from time to time by agreement. In each district, employees in the district shall be represented by one Chief Steward for each shift who shall be a regular employee having seniority and working in the district.

It is understood and agreed that each Chief Steward has full time work to perform in the plant. It is understood and agreed that the Chief Steward will not leave his district during working hours. The foreman will grant permission to the Chief Steward to leave his work for the purpose of presenting grievances. The foreman also will grant permission to the Chief Steward to leave his work if the Chief Steward advises his foreman that a grievance or grievances have been referred to him by one or more of his constituents which require investigation before the grievance or grievances can be properly presented. In such case, the Chief Steward shall advise the foreman of the number and nature of grievances he wishes per-

mission to investigate, and after investigating them shall advise the foreman of those grievances he disposed of and present the remaining grievances to the foreman. If the Chief Steward goes into a department other than the one in which he works to investigate grievances, he will advise the foreman in that department of his presence and the number and nature of the grievances he wishes to investigate. After investigating them, the Chief Steward shall advise the foreman or the designated representative of management, the number and nature of the grievances that he disposed of and present the remaining grievances. If it is necessary for a Chief Steward to speak to an employee about a grievance, he will make arrangements with the employee's foreman to do so. Chief Stewards during their working hours, without loss of time or pay, may in accordance with the terms of this paragraph, perform their duties of conferring with foremen or other designated representatives of the plant management and of investigating grievances. The Corporation will provide a box at a suitable place in each district in which employees may deposit grievances which they wish the Chief Steward to present.

2. The Plant Shop Committee of the Union shall consist of not more than six members, each of whom shall be an employee of the plant having seniority or a regular employee of the plant having seniority who is on leave of absence. One member of the Plant Shop Committee shall be an employee on a skilled worker's classification job. It is understood and agreed that each member of the Plant Shop Committee of the Union who is a regular

employee of the plant has work to perform in the plant, and that he will not leave his work without first notifying his foreman and shall report to his foreman on his return. Members of the Plant Shop Committee, by agreement between the Plant management and the Plant Shop Committee, may have assigned to them certain districts in the plant and on proper occasions may go into those districts, but not into other districts of the plant assigned to other Plant Shop Committeemen. The foreman will grant permission to a Plant Shop Committeeman to leave his work for the purpose of attending regular or special conferences with the Labor Relations Supervisor.

The foreman will also grant permission to Chief Stewards to communicate by telephone on an unsettled grievance with the Plant Shop Committeeman assigned to their districts and also will grant permission to a Plant Shop Committeman (a) to leave his work to confer on grievances with Chief Stewards in the districts of the plant assigned to that Plant Shop Committeeman when the Plant Shop Committeeman has been requested to do so by the Chief Steward, and (b) to present grievances to the Superintendent or other management representative designated to receive them from the Plant Shop Committeeman in his district. Plant Shop Committeemen may perform their regular bargaining procedure duties during working hours without loss of time or pay.

3. The management in a plant may present to the Secretary of the Local Union as grievances any abuses of the bargaining procedure by the Union, its Chief Stewards, its Plant

Shop Committeemen, its Local Union officers, or other representatives or members of the Union. If the management is dissatisfied with the disposition of the grievance made by the Local Union, it may take the grievance up with the International Union. The Union may present to the Labor Relations Supervisor in a plant as grievances any abuses of the bargaining procedure by the management or its representatives. An appeal in accordance with the bargaining procedure may be taken by the Union if it is dissatisfied with the Labor Relations Supervisor's decision. Such grievances by either the Plant Management or the Union shall be presented in writing.

4. Plant Shop Committeemen, Chief Stewards and Local Union Officers employed in the plant are subject to the same discipline as any other regular employee in the plant for violation of shop rules.

5. Regular conferences shall take place between the Plant Shop Committee of the Union and the Labor Relations Supervisor of the plant on one day, Tuesday, of each week. An agenda of the matters to be taken up at the meeting shall be delivered to the Labor Relations Supervisor by the Plant Shop Committee on the Monday morning preceding the meeting. Members of the Plant Shop Committee of the Union shall receive pay from the Corporation at their regular hourly rates for time spent in such regular conferences. The Plant Shop Committee may meet at a place designated by the management on company property for one-half (½) hour immediately preceding a meeting with the Labor Relations Supervisor, for which meeting an agenda has

been filed with the Labor Relations Supervisor by the Plant Shop Committee.

6. Special conferences for emergency matters may be arranged between the Plant Shop Committee of the Union or the President of the Local Union and the Labor Relations Supervisor, or the Plant Manager or his designated representative. Arrangements for such special conferences shall be made in advance and an agenda of the matters to be taken up at the meeting shall be presented at the time the conference is requested. Matters taken up in special conferences shall be confined to those included in the agenda. Members of the Plant Shop Committee of the Union shall receive pay from the Corporation at their regular hourly rates for the time spent in such special conferences.

7. The management will answer in writing any grievance presented to it in writing by the Union: (a) by the foreman within three (3) working days, (b) by the superintendent within five (5) working days, (c) by the Labor Relations Supervisor within seven (7) working days, (d) by the Plant Manager or his designated representative within seven (7) working days. If the Plant Manager or his designated representative is not able to answer the grievance within the specified time he will so advise the Union.

These time limits may be extended at any time by agreement between the Corporation and the Union.

8. A grievance of any employee in connection with his working conditions or a joint grievance of any group of employees in con-

nection with their working conditions shall be presented to the management in the following manner:

A. The employee or one designated member of a group of employees may (1) take the grievance up with the foreman, or (2) deposit the grievance in the box provided for that purpose, or (3) after obtaining permission of the foreman to leave their work, take the grievance to the Chief Steward.

B. The Chief Steward then takes the matter up with the foreman or other designated representative of the management in the district.

C. If the Chief Steward and the foreman or other designated representative of management are unable to dispose of the matter, the Chief Steward then shall reduce the grievance to writing and deliver copies of the written grievance to the foreman or other designated representative of management and to the member of the Union's Plant Shop Committee to whom grievances in that district are to be referred.

D. The Plant Shop Committeeman then takes the written grievance up with the Superintendent or other designated management representative for the particular district.

E. If the Plant Shop Committeeman and the designated representative of management are unable to dispose of the matter, then the Plant Shop Committeeman refers the written grievance to the Plant Shop Committee.

F. The Plant Shop Committee then delivers a written copy of the grievance to the Labor Relations Supervisor and thereafter takes the matter up with the Labor Relations Supervisor at a scheduled meeting.

G. If the Plant Shop Committee and the Labor Relations Supervisor are unable to dispose of the matter, the Plant Shop Committee then refers the matter to the proper higher officer or officers of the Local Union who may then take the matter up with the Plant Manager or his designated representative after arranging a conference.

H. If the officers of the Local Union and the Plant Manager or his designated representative do not dispose of the matter, and the officers of the Local Union believe the matter should be carried further, they then refer the matter to the International Union. If the representatives of the International Union in their discretion decide to take the matter up with the Director of Labor Relations, they shall serve notice of such intention together with a copy of the original grievance prepared by the Chief Steward upon the officers of the Local Union, the Plant Manager or his designated representative and on the Director of Labor Relations of the Corporation.

I. The officers of the Local Union shall then prepare a written statement of all facts and circumstances surrounding the grievance, and the Plant Manager or his designated representative shall write a complete statement of the case. Copies of each of these statements shall be promptly sent to the

International Union and to the Director of Labor Relations of the Corporation.

J. The International Union representatives then take the matter up with the Director of Labor Relations of the Corporation.

9. Should the Union not agree with the disposition of the matter made by the Director of Labor Relations of the Corporation, the Union shall prepare a record which shall consist of the original written grievance prepared by the Chief Steward, the written statement prepared by the officers of the Local Union, the written statement prepared by the Plant Manager or his designated representative and such other written records as there may be in connection with the matter and forward the same to the Vice-President of the Corporation in charge of Operations, together with a notice that the decision of the Director of Labor Relations of the Corporation with respect to that grievance is not satisfactory to the Union. The matter may then be submitted to the Appeal Board for final disposition, such disposition to be made within thirty (30) days of the submission. The Appeal Board shall consist of two executives of the Corporation and two official representatives of the International Union, and an Impartial Chairman. The Union and Corporation representatives of the Appeal Board shall attempt to settle all grievances properly referred to the Board. In the event that they are unable to settle a matter, it shall be determined by decision of the Impartial Chairman and not by majority vote of the Board. The Impartial Chairman shall have the right, however, to participate in all

discussions and meetings of the Appeal Board and shall also have the duty of assisting the parties in resolving particular questions.

10. The Impartial Chairman shall have only the functions set forth herein and shall serve for one year from date of appointment provided he continues to be acceptable to both the Union and the Corporation. The fees and approved expenses of the Impartial Chairman will be paid one-half by the Corporation and one-half by the Union.

11. The power and authority of the Appeal Board shall be limited to (a) matters involving the correctness of the classification of employees, and (b) applying and interpreting the provisions of the agreement, excluding paragraph 1 of Article IV (Rates of Production). In proper cases the Appeal Board may modify penalties assessed by the management in disciplinary discharges and layoffs. The Appeal Board shall not have authority to add to or subtract from or to modify any of the terms of the agreement or to establish or change any wage or rate of pay.

Any case appealed to the Appeal Board on which it has no power to rule shall be referred back to the parties without decision.

12. In any matter involving complaint by the Union under paragraph 2 of Article IV as to any previously established work load, the Appeal Board's decision shall be based upon fair and accurate time studies.

13. Any grievance not appealed from an answer at one step of the bargaining procedure to the next step of the bargaining procedure within five (5) working days after such an-

swer shall be considered settled on the basis of the last answer and not subject to further review, except that on appeals to and from the decision of the Director of Labor Relations the time shall be thirty (30) days.

14. No claims, including claims for back wages, by an employee covered by this agreement, or by the Union, against the Corporation shall be valid for a period prior to the date the grievance was first filed in writing unless the circumstances of the case made it impossible for the employee, or for the Union as the case may be, to know that he, or the Union, had grounds for such a claim prior to that date, in which case the claim shall be limited retroactively to a period of thirty days prior to the date the claim was first filed in writing.

15. If the Corporation fails to give an employee work to which his seniority entitles him, and a written notice of his claim is filed within ten days of the time the Corporation first failed to give him such work, the Corporation will, within six months, give him extra work, (i. e., work to which no other employee is entitled or work to which a junior employee otherwise would be entitled) which he can do sufficient to reimburse him for the earnings he lost through failure to give him such work and this work will be paid for at the hourly rate the employee would have received had he worked, or, if paid for at a lower rate, the Corporation will make up the difference or so much thereof as the Appeal Board shall specify in cash. Failing to give the employee work within six (6) months, the Corporation will pay back wages.

16. The Appeal Board shall not allow back pay to any employee who shall be disciplined for violating Article I, Section 6 of the agreement, which section relates to strikes and lockouts, but if the penalty imposed by the Corporation is two weeks layoff or more, the grievance machinery must be expedited so that the Appeal Board's decision will come within two weeks of the written filing of the grievance.

17. No claim for back wages shall exceed the amount of wages the employee would otherwise have earned at his regular rate less any unemployment or other compensation he may have received from any source during his layoff. The Appeal Board shall have authority in its discretion to deduct such further amount as it may deem fair.

18. No decision of an Appeal Board or of the management in one case shall create a basis for retroactive adjustment in any other case.

19. After a case on which an Appeal Board is empowered to rule hereunder has been referred to the Appeal Board, the case may not be withdrawn by either party except by mutual consent.

20. There shall be no appeal from any Appeal Board's decision. Each such decision shall be final and binding on the Union and its members, the employee or employees involved, and the Corporation. The Union will discourage any attempt of its members, and will not encourage or cooperate with any of its members in any appeal to any Court or Labor Board from a decision of an Appeal Board.

21. Any issue involving the interpretation and/or the application of any term of this agreement may be initiated by either party directly with the other party. Upon failure of the parties to agree with respect to the correct interpretation or application of the agreement to the issue, it may then be appealed directly to the Appeal Board as provided in paragraph 9.

III

Discharge

1. It is agreed that the maintenance of discipline is essential to the satisfactory operation of the plant.

2. The plant management agrees promptly upon the discharge of an employee other than a probationary employee to notify in writing the Chief Steward or Plant Shop Committeeman in the district of the discharge. Should the discharged employee or the Union representative and the Plant Shop Committee consider the discharge to be improper, a complaint shall be presented in writing through the Shop Committee to the Labor Relations Supervisor within forty-eight (48) hours of the discharge. The management of the plant will review the discharge and give its answer within seventy-two (72) hours after receiving the complaint. The management of each plant is authorized to settle such matters. If the decision is not satisfactory to the Union, the matter shall be referred to the bargaining procedure.

IV

Rates of Production

1. The management agrees that in establishing rates of production it will make studies on the basis of fairness and equity consistent with quality of workmanship, efficiency of operations and the reasonable working capacities of normal operators.

2. If any employee or group of employees claim that the rate of production on their job is too fast and the foreman is unable to adjust the matter, the job will be examined again in the following manner:

First, there shall be an examination with a Union representative from the district in attendance and all of the facts shall be made available for the parties dealing with the grievance. Should a satisfactory agreement not result, the matter in dispute shall be referred to the bargaining procedure. The management of each plant is authorized to settle such matters.

V

Layoff, Rehiring and Transfer of Employees

1. New employees of the plant shall be considered as probationary employees for the first ninety (90) days of their employment. The ninety days' probationary period shall be accumulated within not more than one (1) year. After employees have finished the probationary period, they shall be entered on the seniority list of their department or division and shall rank for seniority from the day ninety (90)

days prior to the day they completed the probationary period. There shall be no seniority among probationary employees. The Union shall represent probationary employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment as set forth in Article I, Section 1 of this agreement, but the Union shall not represent probationary employees who have been laid off or discharged except in case the layoff or discharge is for discrimination for Union activities. When other factors enter into the discharge of a probationary employee, the Union shall not represent the probationary employee.

2. Seniority is by department or division.

3. Rank on the seniority list shall not be affected by the race, marital status, or dependents of the employee.

4. The seniority lists of the Corporation on the date of this agreement show the names of all employees of the Corporation entitled to a ranking for seniority.

5. An employee shall lose his seniority for the following reasons only:

a. He quits.

b. He is discharged and the discharge is not reversed through the bargaining procedure.

c. He is absent for five days without notifying the plant. In proper cases, exception shall be made. If the disposition made of any such case is not satisfactory, the matter may be referred to the bargaining procedure.

d. If he does not return to work when called. In proper cases, exceptions shall be made. If the disposition made of any such case is not satisfactory, the matter may be referred to the bargaining procedure.

e. When he is out of work due to layoff for a period of more than twenty-four (24) months. This provision does not apply to employees with seniority ranking prior to January 1, 1938.

6. The plant will give twenty-four (24) hours notice of layoff as hereinafter defined to employees, and to the Chief Steward in the district where the layoff is to be made.

7. The management shall keep the seniority list for each department up to date at all times, and whenever the Chief Steward shall raise a question of seniority, shall make the seniority list available for his inspection for the purpose of settling the question. The management will post in each department a corrected seniority list every ninety days.

8. Notwithstanding their position on the seniority list, Chief Stewards shall, in the event of a layoff, be continued at work as long as there is a job in their district which they are able to do and any of their respective constituents still are at work, and shall be recalled to work after the layoff as soon as there is a job in their district which they are able to do and any of their respective constituents have been recalled to work.

9. Notwithstanding their position on the seniority list, the Plant Shop Committee and the President, Vice-President, Financial Secretary,

Recording Secretary, and Treasurer of the Local Union shall in the event of a layoff and rehire be continued at work at all times when one or more departments or fractions thereof are at work, provided that they are able and do the work being done at the time.

10. The plant agrees that in employing new people in any department it will so far as reasonably practicable give work opportunity to employees who are at the time laid off and are not expected to be returned to work at their plant on the model in the following order:

1. To employees of other departments of the plant, and
2. To employees of other plants of the Corporation. Such employees under this subdivision (2) start work as new employees in the plant.

11. An employee who is transferred either by the Corporation or at his own request from one plant to another plant of the Corporation, shall retain his seniority in the plant from which he was transferred for a period of twelve (12) months from the date he last worked in the plant and shall start as a new employee in the other plant, except as provided in paragraph 12 referring to the transfer of operations or departments from one plant to another plant of the Corporation.

12. When operations or departments are transferred from one plant to another plant of the Corporation, employees engaged on such operations or employed in such departments who are out of work as a result of the trans-

fer may if they so desire be transferred to the other plant and carry their ranking for seniority to the other plant.

13. When operations or departments are discontinued, then so far as reasonably practicable, employees affected will be given other work in the plant which they can do and without change of ranking for seniority.

14. When an employee is promoted or transferred to a higher paid classification, he will be paid the working rate of the new classification for fifteen (15) days after which he will receive the top rate. If he has previously worked on and at the top rate of the classification to which he was promoted or transferred, he will be paid the top rate immediately.

15. If an employee who has worked on or at the top rate of a higher paid classification is reduced to a lower paid classification and is subsequently promoted to an intermediate classification, the work of which he can perform without a breaking-in period, he will receive the top rate for the intermediate classification.

16. When an employee who has been working in a higher paid classification is transferred to a lower paid classification in the plant, he will start at the top rate of the classification.

17. When an employee who formerly worked in one plant of the Corporation is hired in as a new employee in another plant of the Corporation, he will receive the working rate of the classification in which he is employed in

the other plant for fifteen (15) days, after which he will receive the top rate. If prior to the date of his hiring in the new plant he has worked for the Corporation on and at the top rate of the same classification upon which he is hired or on or at the top rate of a higher paid classification and can perform the work of the new classification without a breaking-in period, he receives the top rate immediately.

18. Sections 14, 15, 16 and 17 of this article apply only to hourly rate employees who are in classifications to which the ninety (90) day plan of wage advancement is applicable.

Layoff

19. When there is a decrease in force, the following procedure shall be followed:

1. Probationary employees will be laid off on a plant-wide basis in such manner and as expeditiously as is consistent with the continuous, efficient and orderly operation of the plant or departments involved, providing that the laid-off seniority employee who displaces the probationary employee is willing to accept, and has the present ability to perform the job.
2. Employees with seniority will be laid off according to seniority.

Rehiring

20. When there is an increase in force after a layoff, the following procedure shall be followed:

1. Employees with seniority shall be returned according to seniority.

2. When an employee's absence from work is due solely to disability resulting from sickness or injury and due proof of the disability is given to the plant, he will be returned to work in accordance with his seniority and these rules as nearly as may be as if he had not suffered disability, providing he passes the required physical examination. If the disposition made of any such case is not satisfactory, the matter may be referred to the bargaining procedure.

21. Promotions to higher paid jobs or better jobs with equal pay are based primarily upon merit and ability, but when all other things are equal the employee having the greatest seniority will receive the preference. Violations of other than merit and ability provisions of this section shall constitute grounds of a grievance.

22. For the purpose of this article dealing with seniority, the word "employee" means an employee who is entered on the seniority list.

23. For the purpose of this article dealing with seniority, the word "layoff" means an adjustment or a reduction in working force due to model change or a decrease in the company's business, and does not mean temporary adjustments of the working force due to emergencies, week-end operations, temporary adjustment of schedules, etc. If the temporary adjustment extends beyond seven (7) working days the Union and the Corporation will consider the advisability under the existing circumstances of adjusting the working force according to the layoff provisions in the contract.

24. The Union recognizes the need for exceptional employees. Exceptional employees are employees who have a skill needed in facilitating the start of a new model or at times working forces are reduced. Any complaint by the Union in regard to the listing of any employee on the list shall be referred to the bargaining procedure.

25. The Corporation agrees that in movements of work from one plant of the Corporation to another not covered by Section 11 or Section 12 of this agreement, the Company will discuss the movements with the International Union.

26. The re-employment rights of former employees who enter the United States Armed Services will be determined on the basis of applicable laws and regulations.

27. Veterans of World War II who were probationary employees of Chrysler Corporation at the time of their induction into the United States Armed Services who are now employed at Chrysler Corporation or who in the future meet the same conditions of reinstatement as are required of veterans who were former seniority employees, shall be extended the same reinstatement and employment benefits as are conferred upon veteran former seniority employees.

28. Veterans of World War II who were not formerly employed by Chrysler Corporation who possess evidence of satisfactory completion of service and make application for employment within ninety (90) days of their discharge from the United States Armed Forces

and meet the other qualifications for reinstatement contained in the Selective Training and Service Act of 1940, as amended, and other applicable laws and regulations, shall, upon completion of thirty (30) days employment, receive seniority credit equivalent to their period of service in the Armed Forces in the event of a layoff during their probationary period, and upon completion of their probationary period shall be entered upon the seniority lists of their department or division with seniority credit equivalent to their period of military service plus their probationary period.

29. Veterans of World War II who were former Chrysler employees and are re-employed in accordance with the Selective Training and Service Act of 1940, as amended, and other applicable laws and regulations, will be granted leaves of absence for a period not to exceed a period of time equal to their seniority in order to partake in full-time schooling offered them under the G. I. Bill of Rights.

30. If an hourly rated employee is promoted to assistant foreman, foreman or to any other supervisory or salaried position, and is thereafter transferred to an hourly rated employee, he shall accumulate seniority while working in the supervisory or salaried position and when so transferred shall commence work as an hourly rated employee with the seniority ranking he had at the time of his promotion, plus the seniority accumulated while he was working in the supervisory or salaried position.

31. Provisions pertaining to shift preference may be negotiated locally in the plants. Any such agreements must have sufficient flexibil-

ity to give full protection to efficiency of operations at all times.

VI

Leaves of Absence

1. Leaves of absence not to exceed one year may be granted employees without loss of seniority in cases which the Corporation deems proper.

2. Members of the Union elected to Local Union positions or selected by the Union to do work which takes them from their employment with the Corporation shall at the written request of the Union receive temporary leaves of absence for periods not to exceed one year, and upon their return shall be re-employed at work generally similar to that which they did last prior to the leave of absence, and with seniority accumulated throughout their leave of absence.

VII

General

1. An employee reporting for work on his foreman's or management's instructions but for whom no work at his regular job is available will be offered at least four (4) hours employment at some other work at his regular hourly rate. This provision shall not apply when the lack of work is due to a labor dispute, fire, flood or other cause beyond the control of the management.

2. Employees regularly employed on the second or third shift shall receive in addition to their regular pay for the pay period five (5)

per cent and seven and one-half (7½) per cent, respectively, additional compensation.

3. Time and one-half will be paid for time worked over eight (8) hours per day.

4. Time and one-half will be paid for time worked over forty (40) hours per week.

5. Time and one-half will be paid for Saturday work in excess of forty (40) hours per week. No employee will be laid off during the week for the purpose of avoiding overtime payment. For Saturday work following a holiday specified below in Section 7 in the same week, time and one-half will be paid.

6. Time and one-half will be paid for the sixth consecutive day worked in the regularly scheduled work week. A full day's absence due to a shortage of material will be considered as a day worked for the purpose of computing the sixth consecutive day worked except in those instances when the shortage of material is the result of a labor dispute.

7. Double time will be paid for work on Sundays and the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, except as outlined in paragraph 8.

Employees will be paid eight hours pay at their regular straight time hourly rate exclusive of night shift and overtime premium for the holidays specified above in this section providing they meet all of the following eligibility rules unless otherwise provided herein:

(a) the employee has seniority as of the date of the holiday,

(b) the employee would otherwise have been

scheduled to work on such day if it had not been observed as a holiday, and

(c) the employee must have worked the last scheduled working day prior to and the next scheduled working day after such holiday within the employee's scheduled work week.

Seniority employees who have been laid off in a reduction of force or who have gone on sick leave during the work week prior to or during the week in which the holiday falls, shall receive pay for such holiday. When a holiday falls on Saturday, eligible employees shall receive holiday pay provided they have worked the last preceding scheduled work day within the week in which that holiday falls. When an eligible employee is on an approved leave of absence and returns to work following the holiday but during the week in which the holiday fell, he shall be eligible for pay for that holiday. Employees working on operations which are normally classified as seven day operations and whose work is covered by paragraph 8 of this article, shall receive holiday pay in the event the holiday falls on one of their regularly scheduled days off and they meet the other eligibility requirements of this procedure for paid holiday time; provided, however, that if such employees work on a holiday which falls on their scheduled day of work when such employees are scheduled to work on a holiday and do work, they shall not receive holiday pay under this procedure but shall be paid for time worked in accordance with said paragraph 8. Employees not working on operations which are normally classified as

seven day operations, who may be requested to and do work on any of the above holidays, shall not receive holiday pay but shall be paid in accordance with the first sentence of this section. In applying this procedure when any of the above enumerated holidays fall on Sunday and the day following is observed as a holiday by the State or Federal Government, it shall be paid as such holiday. Employees who receive holiday pay under this procedure and who work part of a shift that falls within the holiday shall receive straight time for such work on the holiday.

8. Hourly rated employees working on operations which are normally classified as seven (7) day operations will not be paid overtime for Saturday or Sunday work when the Saturday or Sunday is a working day of their scheduled week, unless such hours exceed eight (8) hours per day or shift, or forty (40) hours per week. Such employees are to receive double time for hours worked on any of the designated legal holidays other than Sunday and for hours worked on the seventh consecutive day. The seven consecutive days need not fall within the same pay period. A legal holiday on which such an employee performs no work will be considered as a day worked for the purpose of computing the sixth consecutive day worked and in such case the six consecutive days need not fall within the same pay period. In all other cases the six consecutive days must fall within the same pay period.

9. The allowance of an overtime premium on any hour excludes that hour from consideration for overtime payment on any other basis,

thus eliminating any double overtime payments.

10. A bulletin board shall be placed in each district by the Corporation which may be used by the Union for posting notices of the following types:

1. Notices of recreational and social events.
2. Notices of elections.
3. Notices of results of elections.
4. Notices of meetings.

The bulletin board shall not be used by the Union for disseminating propaganda of any kind whatsoever; and among other things shall not be used by the Union for posting or distributing pamphlets or political matter of any kind whatsoever, or for advertising.

11. When on full-time three-shift per day operations the time from the beginning of the shift to the end of it does not exceed eight hours, the employees shall work 7¾ hours on each shift and shall have a lunch period of one-quarter hour and shall receive eight hours pay. It is understood that this arrangement does not apply to shifts on which the employees work eight hours and have in addition a period for lunch, or to shifts on which by reason of reduction of hours for reasons other than the lunch period, there is time for a lunch period.

12. An hourly rated employee will ring his clock card at the noon hour when he leaves the plant.

13. The Corporation will furnish to the International Union a copy of the rate classification book of the Corporation. The rate classification book is to be treated in confidence and kept at the office of the International Union.

14. The Corporation will increase the wages of the employees covered by this agreement eleven and one-half cents (11½¢) an hour effective at the start of the pay period beginning April 28, 1947, provided this agreement is ratified and the Corporation so notified by May 6, 1947.

15. During May, 1947, the Corporation will make a payment in lieu of vacation with pay for 1947 of fifty-seven dollars ($57.00) to all eligible hourly rate employees who have at least one (1) year's and less than five (5) years' seniority on May 1, 1947, and a payment of one hundred fourteen dollars ($114.00) to all eligible hourly rate employees having five (5) years' or more seniority on May 1, 1947.

The following employees will be considered eligible.

(a) Those who are on the active hourly rate payroll on May 1, 1947, unless they have since been promoted to a salaried classification.

(b) Those who have worked for the Corporation during eight (8) of the preceding twelve months.

(c) Those who, on May 1, 1947, are absent due to sickness or injury and are receiving Group Sick and Accident Insurance benefits or Workmen's Compensation benefits.

(d) Those who, on May 1, 1947, are on leave of absence for a period not to exceed ninety (90) days.

A similar payment will be made during May, 1948 unless the general wage level of the Cor-

poration is changed by negotiation prior to that time, in which case the amount of the payment will be subject to negotiation.

16. The regularly scheduled work week starts at 12:01 a. m., Monday, and ends 168 hours thereafter, except those employees on third shift operations starting Sunday night in which case their regularly scheduled work week starts with the beginning of their shift Sunday night and ends 168 hours thereafter.

VIII

Special Provisions for Skilled Workers

1. A skilled tradesman is defined as one having served a four-year apprenticeship or its equivalent in any of the popularly recognized and accepted skilled trades such as tool makers, die makers, plumbers, electricians, etc.

2. The management will endeavor to the best of its ability to equalize hours among all skilled workers in the same classification in the department. Hours taken off by employees because of illness or at their own request will be considered as hours worked in the equalization of hours.

This agreement shall continue in full force and effect until April 26, 1949, and from year to year thereafter, unless between April 1 and April 15 of any year thereafter the Corporation notifies the Union, or the Union notifies the Corporation, of its desire to terminate the agreement, and thereupon the agreement shall terminate as of April 26 of the year in which the notice is given. Between April 1 and April 15, 1949, or between April 1 and April 15 of

any year thereafter the Corporation may notify the Union, or the Union may notify the Corporation, of its desire to amend the agreement, in which event the notice shall set forth the nature of the amendments desired. If the parties are unable to agree upon the proposed amendment or amendments on or before April 26 in any such year, unless the party or parties proposing the amendment or amendments withdraws them, the contract shall expire on April 26 of that year. Any amendments which may be agreed upon shall become and be a part of the agreement without modifying or changing any of the other terms of the agreement. During the term of this agreement the rates for all existing classifications are fixed except that each party may on one occasion only, and upon written notice to the other, signify its desire to open wage rate negotiations, in which event the notice shall set forth the adjustment or adjustments desired. Notice shall be in writing and shall be sufficient if sent by mail addressed, if to the Union, to International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, 4147 Cass Avenue, Detroit, Michigan, or to such other address as International Union, United Automobile, Aircraft and Agricultural Implement Workers of America shall furnish to the Corporation in writing, and if to the Corporation, addressed to Chrysler Corporation, 341 Massachusetts Avenue, Highland Park, Detroit, Michigan, Attention, Secretary, or to such other address as Chrysler Corporation

shall furnish to International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, in writing.

CHRYSLER CORPORATION.

INTERNATIONAL UNION,
UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, affiliated
with the C. I. O.

April 26, 1947

Mr. Robert W. Conder
Director of Labor Relations
Chrysler Corporation
341 Massachusetts Avenue
Detroit 31, Michigan

Dear Mr. Conder:

Today Chrysler Corporation and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO as representative of hourly rated employees, entered into an agreement. It is understood that each party has withdrawn all rate and contract proposals and demands which are not incorporated in that agreement.

The Union agrees to submit the agreement to the union membership in the plants covered by the agreement, for ratification by them on or before Tuesday, May 6, 1947, and the International Union and its Local Unions in these plants will recommend to the membership that it be ratified.

Very truly yours,

/s/ NORMAN MATTHEWS
International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO

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April 26, 1947

Mr. Robert W. Conder
Director of Labor Relations
Chrysler Corporation
341 Massachusetts Avenue
Detroit 31, Michigan

Dear Mr. Conder:

On January 26, 1946, coincident to the signing of an agreement between the Union and Chrysler Corporation, I wrote you as follows:

"Now that the Chrysler Corporation and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, have entered into an agreement, and in order to further clarify understandings reached under that agreement the International Union and Local Unions disapprove violations and abuses by union representatives of the bargaining procedure provided in the agreement of the parties.

"The International Union and Local Unions believe that abuses were due to lack of understanding and because of changing conditions during the war. We believe now that the war has ended, and we return to normal conditions, the situation should improve.

"The International Union and Local Unions believe that a large percentage of time has been spent by Union representatives on matters other than provided for in the agreement. The International Union and Local Unions will make a sincere effort to keep to the minimum of time required for bargaining under the agreement. In addi-

tion, the International Union will assign a full-time representative to see that this abuse of the bargaining procedure will discontinue.

"The International Union and Local Unions will advise its Union representatives to live up to the agreement in good faith."

You have advised me that this condition has not improved. This letter is to assure you that I will personally follow this situation and that substantial improvement will result.

Very truly yours,

/s/ NORMAN MATTHEWS
International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO

April 26, 1947

International Union, UAW-CIO
4147 Cass Avenue
Detroit 1, Michigan

Dear Sirs:

It is mutually agreed that all employees transferred under the so-called war transfer clause (subsequently Article V, Section 26 of the agreement dated January 26, 1946, between the Union and the Corporation) who, by agreement, have remained at the plant to which they were transferred shall rank for seniority from the date of their latest entry into that plant. Such employees and all other employees who, subsequent to August 17, 1945, transferred to another plant of the Corporation under Article IV, Section 11 of the agreement of September 10, 1943, as amended, (subsequently Article V, Section 11 of the agreement of Jan-

uary 26, 1946), shall be credited with their uninterrupted service in both plants for the purpose of determining their eligibility for vacation payment.

Yours very truly,
CHRYSLER CORPORATION
ROBERT W. CONDER

Accepted by:

INTERNATIONAL UNION,
UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO
NORMAN MATTHEWS

[fols. 109-111] IN SUPREME COURT OF MICHIGAN

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., Emil Mazey, in his own behalf and in behalf of 1776 employees of the Chrysler Corporation, Norman Matthews, Arthur Grudzen, Alex Barbour, William Kuck, Ralph Filoccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, William T. Archer, Michael Lacey, Harry Southwell and Blaine Marrin, Plaintiffs and Appellees,

v.

JAMES N. MCNALLY, Wayne County Prosecuting Attorney, and Eugene F. Black, Attorney General of the State of Michigan, Defendants and Appellants.

OPINION — Filed June 29, 1949

Before the entire bench.

NORTH, *J.*

Plaintiffs, commonly known and herein designated as UAW-CIO, and others, sought and obtained a decree enjoining the prosecuting attorney of Wayne County and the attorney general, who intervened as a defendant, from prosecuting criminal proceedings under Act No. 318, Pub. Acts 1947 *, which criminal prosecutions were threatened [fol. 112] under circumstances hereinafter noted. From the decree entered in the circuit court the defendants have appealed.

A dispute involving wages arose between UAW-CIO union employees and their employer, the Chrysler Corporation. Resort was had to collective bargaining. The notices required by State and Federal law regulating labor disputes were given and mediation sessions between the respective parties followed. While such sessions were pending the union officers concluded that further mediation would be of no avail and thereupon gave notice to the representatives

* Act No. 176, Pub. Acts 1939, as amended; Stat. Ann. 1947 Cum. Supp. § 17.454 (1) et seq. We are not herein concerned with the latest amendment to this statute. See Act No. 230, Pub. Acts 1949.

of the Chrysler Corporation that a strike would be called, and such strike did go into effect on the forenoon of the following day. The calling and putting into effect of this strike was obviously in violation of the terms of the statute about to be noted and rendered plaintiffs subject to threatened criminal prosecution, providing the statute is valid.

Act No. 318, Pub. Acts 1947, commonly known as the Boniñe-Tripp act, provides that in the event the parties to a controversy such as here involved are not able to agree among themselves or that a solution and determination of their controversy cannot be reached by mediation or arbitration, before a strike may be called an election shall be held in accordance with the terms of the statute and the strike shall not be instituted unless "a majority of all employees in such bargaining unit * * * vote in favor of such action." Act No. 318, § 9a, Pub. Acts 1947. Section 22 of the act in part reads:

[fol. 113] "Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, * * * while mediation is pending * * *, or while an election is pending * * * shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment."

It is plaintiffs' contention that insofar as the statute makes the calling of an election and the affirmative vote of a majority of all employees in the bargaining unit involved in the labor controversy a prerequisite to calling or instituting a strike and provides a penalty for violation of the statute, it impairs the rights of plaintiffs in violation of sections 4 and 16, Article II, of the Michigan Constitution, and the due process clause of the Fourteenth Amendment of the Federal Constitution, and further that the noted statutory provision is repugnant to the right of collective bargaining granted to unions under the National Labor Management Relations Act, i.e.—the Taft-Hartley Act. (61 Stat. 136; 29 U.S.C.A. 1948 Cum. Supp. §§ 141-197.) On this appeal defendants have presented two questions, as follows:

"1. Do the election requirements of Act No. 318, secs. 9, 9a, 9b, and 9c, Pub. Acts 1947, known as the Boniñe-Tripp

Act, and the penal provisions thereof, sec. 22, violate plaintiffs' and appellees' rights of freedom of speech and due process of law as guaranteed by Art. II, secs. 4 and 16 of the Constitution of Michigan, 1908, and Amendments 1 and 14, U. S. Constitution?'"

"'2. Has Congress, in the National Labor Relations Management Act (Taft Hartley Act), by its expressed intent therein, so preempted the field of regulation of labor-management relations in industries affecting Commerce that [fol. 114] any State police power regulation of such relations in industries affecting Commerce must necessarily be in conflict with such federal law and therefore null and void?'" *

In granting plaintiffs the injunctive relief prayed, the circuit judge placed decision on three grounds: That the statutory requirement of an election was (1) in violation of Article II, §§ 4 and 16 of the Michigan Constitution; (2) in violation of the Fourteenth Amendment of the Federal Constitution; and (3) as affecting interstate commerce in violation of Article I, § 8 (3) of the Federal Constitution in view of the National Labor Management Relations (Taft-Hartley) Act.

The recent decision of the United States Supreme Court in International Union, U.A.W., A.F. of L., Local 232 v. Wisconsin Employment Relations Board, —— U. S. —— (decided February 28, 1949), is informative in the field of law pertinent to the instant case. For brevity we refer to the cited case as the Wisconsin case. That suit involved the constitutionality of the Wisconsin Employment Peace Act, the pertinent portion of which we quote in the accom-

* Question number two is restated by appellees as follows:

"'2. In view of the National Labor Management Relations Act and the provisions requiring collective bargaining by representatives in industries affecting commerce, was it within State authority to make a strike unlawful if not approved by a majority of the employees in the collective bargaining unit?'"

[fol. 115] panying footnote.* At the outset of the United States Supreme Court's opinion it is stated that the validity of the Wisconsin statute "is challenged because it is said to transgress constitutional limitations imposed by the Thirteenth and Fourteenth Amendments and by the Commerce Clause as implemented by the National Labor Relations Act (49 Stat. 449) and the Labor Management Relations Act of 1947." 61 Stat. 136; 29 U.S.C.A. 1948 Cum. Supp. § 141-197. Negotiations incident to a new collective bargaining contract between the employer, the Briggs & Stratton Corporation, and its employees reached a deadlock. Thereupon the union resorted to repeatedly calling union meetings during working hours and without warning the employees would leave their work and return at their pleasure. This occurred 26 times within approximately four and one half months. This procedure had the desired [fol. 116] effect of disrupting the employer's business, and as described by the union leaders was "a new technique for bringing pressure upon the employer" to obtain concessions incident to the union's demands made in the collective bargaining proceedings.

The employer instituted proceedings before the Wisconsin Employment Relations Board. After prescribed pro

* "The Wisconsin Employment Peace Act provides in part as follows:

"(2) It shall be an unfair labor practice for an employe individually or in concert with others: (a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family. * * * (c) To co-operate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike. * * * (h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike." Wis. Stat. (1947) c. 111 § 111.06.

cedure that board ordered the union to cease and desist from "engaging in any concerted efforts to interfere with production by arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours; or engaging in any other concerted effort to interfere with production of the complainant except by leaving the premises in an orderly manner for the purpose of going on strike."

The union sought and obtained in the Wisconsin courts review of the board's order. In the particular above noted the Wisconsin Supreme Court affirmed the board's order (250 Wis. 550; 27 N.W. 2d 875); and in that respect the United States Supreme Court affirmed the holding of the Wisconsin Supreme Court. While the issue in the Wisconsin case was not identical with that in the instant case, the reasoning and holding in that case are applicable to the case at bar.

Plaintiffs' first argument in support of their contention that the statute here involved is unconstitutional is stated in their brief as follows: "To prohibit by law calling or [fol. 117] instigating a strike without distinction as to object or other circumstances is so unreasonable as to deny freedom of speech and due process of law."

As a sufficient refutation of this contention it need only be noted that the Bonine-Tripp act does not prohibit calling or instituting a strike incident to any legitimate labor controversy. Instead the act merely requires as a condition precedent to calling or instituting a strike the approval so to do expressed at an election by the vote of a majority of the employees in the bargaining unit. Quite universally there are three parties interested in and affected by a strike—the employer, the employees, and the public. Plaintiffs' statement in their brief concerning picketing is equally applicable to a strike:

"Nobody is really confused into thinking that picketing is not something more than speech or that the right to picket as supported by freedom of speech is not without limits."

In the Wisconsin case, supra, the ultimate decision was that the state might provide against undue coercion. A strike is not only a means of exercising the right of free speech, but it is likewise a medium of exercising coercion.

As such it is subject to reasonable regulation by the state in the exercise of its police power. It may well be inferred that the legislature in enacting the statutory provision under consideration was at least to some extent motivated by a desire to prevent stoppage of work in a plant as to all of the employees, which stoppage was caused by a small number of employees in a key position going on [fol. 118] strike. The detriment in such cases to the remaining majority of the employees, to the employer, and also generally to the public, is obvious; and the legislature might well have considered it a justifiable reason for restricting or limiting the union's right to institute a strike incident to collective bargaining proceedings as prescribed in the Bonine-Tripp act.

"Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility." South Carolina Highway Department v. Barnwell Brothers, Inc. 303 U. S. 177, 191.

"The most that can be said is that whether that determination was an unreasonable, arbitrary or unequal exercise of power is fairly debatable. In such circumstances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question." Zahn v. Board of Public Works, 274 U. S. 325.

"The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted. • • •

"But the circumstances that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. • • •

"We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist.'" Carpenters Union v. Ritter's Cafe, 315 U. S. 722.

We think it is not an unreasonable exercise of the state's police power to forbid resort to a strike which is not ap- [fol. 119] proved by a majority of the employees involved, and thereby protecting both the majority of the employees in the bargaining unit and the public. Nor is it a denial of free speech any more than is the limitation of certain other phases of action in labor controversies. Carpenters Union v. Ritter's Cafe, supra; Lincoln Union v. Northwestern Co., 335 U. S. 525. In disposing of a like contention in the Wisconsin case, *supra*, the court said:

"It is further contended that the statute as applied invades rights of free speech and public assemblage guaranteed by the Fourteenth Amendment. We recently considered a similar contention in connection with other state action concerning labor relations. *Lincoln Federal Labor Union et al.* v. *Northwestern Iron and Metal Co.*, and *Whitaker et al.* v. *North Carolina*, 335 U. S. 525 and *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538. For reasons there stated, these contentions are without merit."

The Wisconsin statute, which in its requirement of a majority vote of the employees of the bargaining unit is quite identical with the like provision in the Bonine-Tripp act; was held valid as against like contentions as herein presented, and re-hearing was later denied, in Hotel and Restaurant Employees' International Alliance, Local No. 122 v. Wisconsin Employment Relations Board, 236 Wis. 329; 294 N.W. 632; 295 N.W. 634. On appeal to the United States Supreme Court the decision of the Wisconsin court was affirmed. See 315 U. S. 437. In its opinion the Supreme Court of the United States said:

"The specific question for decision is the constitutional validity of an order made by the Wisconsin Employment Relations Board acting under the Employment Peace Act, Wisconsin Laws of 1939, c. 57. • • •

[fol. 120] "What public policy Wisconsin should adopt in furthering desirable industrial relations is for it to say, so long as rights guaranteed by the Constitution are respected. *Aikens* v. *Wisconsin*, 195 U. S. 194; *Senn* v. *Tile Layers Union*, 301 U. S. 468. As the order and the appropriate provisions of the statute upon which it was based leave the peti-

tions of freedom of speech unimpaired, the judgment below must be affirmed."

It is worthy of note that the United States Supreme Court in its opinion literally quoted the provision of the Wisconsin statute which makes it " 'an unfair labor practice' " to " 'Cooperate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike' * * *."

As pertinent to the issue in the instant case we quote the following from the opinion of the Wisconsin Supreme Court in the Hotel and Restaurant Employees' Local No. 122 case, 236 Wis. 329, 345:

"We find nothing in the act which prevents a minority of a collective-bargaining unit from withdrawing from employment either singly or in concert. (For like provision in the Bonine-Tripp act, see § 132.) * * *

"The petitioners complain that the characterization of the acts of employees as unfair labor practices cannot be made to depend on the action of a majority of a collective-bargaining unit; that the legislature cannot place it within a power of a majority of the collective-bargaining unit to authorize a strike. This argument is an attack upon a principle which is fundamental in the attempt of the legislature and of congress to regulate labor relations. The principle upon which authorized collective bargaining depends is that the rule of the majority within an appropriate collective-bargaining unit shall bind the minority. We see no way by which the principle of collective bargaining can be maintained unless this right of a majority of a collective-bargaining unit to speak for the unit including the minority is maintained. A bargain on behalf of a collective-bargain-[fol. 121] ing unit amounts to nothing, if after it is made the individuals or some of them comprising that unit are not affected thereby. This principle is explicit in the National Labor Relations Act (29 USCA § 151 et seq.), in the Railway Labor Peace Act (45 USCA § 151 et seq.), and in the act now under consideration. If the majority of a collective-bargaining unit can thus coerce the minority in the matter of bargaining, we see no reason why the legislature may not vest in a majority of the unit power to deter-

mine whether such conditions obtain in the employment as warrant the calling of a strike in an effort to remedy them. * * *

"In providing for 'industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services' * * *, we see no reason why the legislature may not forbid concerted picketing and boycotting in aid of an unauthorized strike. * * * All these questions relating to rights of employees to organize, conduct strikes, boycotts, and other coercive measures are in the field of public policy. As the court of appeals of New York said in the case already cited (May's Furs & Ready-To-Wear, Inc., v. Bauer (1940), 282 N.Y. 331; 26 N.E. (2d) 279), and as this Court has said many, many times, these questions are for the legislature. Courts do not sit to pass upon the wisdom or unwisdom of the acts of the legislature. * * *

"Both parties to a labor dispute are under the same constitution and both are subject to the valid acts of the legislature. Just where the line should be drawn in an effort to balance the bargaining power of the parties is primarily a matter of public policy for the legislature and not a question of law for the courts."

While seemingly quite unnecessary, it may be noted that section 19 of the Bonine-Tripp act provides:

"This act shall be deemed an exercise of the police power of the state of Michigan for the protection of the public welfare, safety, prosperity, health and peace of the people; and all the provisions of this act shall be liberally construed for the accomplishment of said purposes."

In the light of the authorities hereinbefore cited we are of the opinion that, contrary to appellees' contention, the provision of the act under consideration is not "so unreasonable as to deny freedom of speech and due process of law."

[fol. 122] In so concluding we are mindful that in a case decided by the Federal district court in Kansas an opposite conclusion was reached. See Stepleton v. Mitchell, 60 Fed. Supp. 51. We also note the decision in Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810; and

American Federation of Labor v. Bain, 165 Ore. 183, cited by appellees and relied upon in the opinion of the trial judge. But the statutory provision considered in the Alabama case was materially different than the Michigan statute in the following respect. The vote required to authorize a strike was "the vote of the majority of the regular employees working in the business, plant, or in such unit thereof * * *." In construing this provision, the court said:

"The denial of the right to strike is made to rest, not upon the rule of the majority of any bargaining unit, or in any craft to which the workmen belong, but upon the whim or caprice of others who may be employed in the business, plant, or unit thereof, whoever they may be and whatever views they may entertain as to labor or labor unions."

In the remaining case, American Federation of Labor v. Bain, *supra*, the court held invalid the Oregon statute which prohibited picketing by a minority of the employees of a given employer. The court said: "* * * the controversy has resolved itself largely into the question whether the regulation, or, as the plaintiffs would have it, the prohibition, of picketing and boycotting in Sections 1 and 3, invades the plaintiffs' fundamental rights and liberties of freedom of speech and of assemblage." Obviously the issue in the Oregon case was quite materially different than that [fol. 123] in the instant case, and hence the holding in the Oregon case is not persuasively material to decision herein.

As earlier noted herein the remaining question as restated in appellees' brief is as follows:

"2. In view of the National Labor Management Relations Act and the provisions requiring collective bargaining by representatives in industries affecting commerce, was it within State authority to make a strike unlawful if not approved by a majority of the employees in the collective bargaining unit?"

On this issue the position of appellees is stated in their brief as follows: "The strike election provisions of the Bonine-Tripp Act conflict with the National Labor Management Relations Act."

Admittedly, as applied to interstate commerce, if the Bonine-Tripp Act does conflict with the provisions of the National Labor Management Relations Act, the former is not enforceable; but if there is no conflict the validity and enforceability of the Bonine-Tripp Act is not impaired on this ground. In appellees' brief it is pointed out that as related to collective bargaining the National Labor Management Relations Act contains specific provisions, and it is asserted "it covers the field of the strike in consequence of failure to reach an agreement." And appellees' brief continues.

"It (the Federal act) sets the following conditions precedent to striking: (1) Sixty days notice of contract termination; (2) Offer to negotiate new contract; (3) Notice to Federal and State conciliation boards of existence of a dispute; and (4) continues in full force and effect without resorting to strike or lockout all the terms and conditions of the existing contract for a period of 60 days." See National Labor Management Relations Act (1947), [illegible] S. [illegible]

[fol. 124] We do not discover in the foregoing any provisions which are inconsistent with or in conflict, either expressly or by necessary inference, with the requirement of the Bonine-Tripp act that as precedent to calling a strike there shall be a vote of the employees of the bargaining unit; nor has there otherwise been called to our attention any such inconsistent or conflicting provisions in the Bonine-Tripp act. The very fact that subdivision 3 of the above quotation requires notice to "State conciliation boards" indicates that the Federal act was not thought to be exclusive of permissible state regulations. Further, it is difficult, if not quite impossible, to read the decision in the Wisconsin case hereinbefore noted without coming to the conclusion that in the exercise of its police power a state may by legislation regulate the exercise of the right of employees to strike, providing such regulations are not in conflict with or inconsistent with Federal regulations.

As stated by Justice Brandeis in Dorchy v. Kansas, 272 U. S. 306: "Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike." That individual states have the right within the valid exercise of police power to regulate the calling of a strike, and that restrictions of that character do not violate the constitu-

tional liberty possessed by employees or union labor organizations has been adjudicated by highest authority. See Nebbia v. New York, 291 U. S. 502. In Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U. S. 740, 749, it was said:

[fol. 125] "Furthermore, this Court has long insisted that an 'intention of Congress to exclude States from exerting their police power must be clearly manifested.' . . . We will not lightly infer that Congress by the mere passage of a Federal Act has impaired the traditional sovereignty of the several States in that regard."

That congress in passing the Labor Management Relations Act of 1947 did not intend thereby to deprive the states of any and all power to limit or qualify the right to strike, is persuasively indicated by section 13 of the Act which reads:

"Nothing in this Act, *except as specifically provided for herein*, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, *or to affect the limitations or qualifications on that right.*"

And in Kelly v. Washington, 302 U. S. 1, 10; 82 L. Ed., 3, 40, the court said:

"The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'"

We conclude that in the particular under consideration the Michigan statute is not in conflict with the National Labor Management Relations (Taft-Hartley) Act.

In considering this case we have not overlooked appellees' contention that enforcement of the statutory provision herein involved would be in conflict with the commerce clause of the United States Constitution, Article I, § 8 (3). The test would be: Does this statutory provision impose an undue burden upon interstate commerce? We think it does [fol. 126] not. This issue was quite fully considered in International Union v. Wisconsin Employment Relations

Board, *supra*, and decision therein was adverse to appellees' contention herein. In reaching a like conclusion we are content to rest decision on the holding of the Wisconsin court, incident to which it was said:

"But if the contention of the respondents on the ground now under consideration is upheld, then every order of the board based on violation of unfair labor practices of employees (and we might add every pertinent act of the legislature) may be ignored and there will be nothing left that the board can effectively do, as some products of every manufacturer inevitably reach interstate commerce."

To hold otherwise than in the cited case in practical effect would be to say that in this type of cases the commerce clause of the United States Constitution largely, if not wholly, nullifies the inherent rights of states to exercise police power. We are not prepared to so hold. In this connection it may be noted that appellees call attention to the fact that some employees of the Chrysler Corporation who would be classed in the same bargaining unit are employed by the corporation in Indiana and some in California. Even so, we are of the opinion that this circumstance cannot be held to be a restriction upon the exercise in Michigan of the state's inherent police power incident to a strike which is located in this state. Otherwise diversity of state location of employees would limit the right of any of the states, wherein the employees were located, in the exercise of inherent police power in the particular with [fol. 127] which we are here concerned. We know of no authority sustaining such conclusion and consider it not tenable.

"Under our constitutional system, there necessarily remains to the states, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. *Minnesota Rate Cases*, 230 U. S. 352, 402. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. * * * Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced." Kelly v. Washington, *supra*.

Incident to appellees' challenge of the validity of the statutory provision here involved, we find no merit in their contention that: "It is equally obvious that the statute is not saved by the delegation of authority to a majority of the bargaining unit. The character of the right (to strike) under discussion pertains to each individual." The right of an individual to terminate his employment is expressly preserved to the employee by the portion of section 13a of the Bonine-Tripp act, which reads:

"Nothing in this act shall be construed to require an employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment."

In granting the injunctive relief prayed in the instant case the circuit judge was in error. The decree entered in the circuit court is reversed and a decree dismissing the bill of complaint may be entered in this Court. Since the constitutionality of the statute and an important question are here involved, no costs are awarded.

Signed Walter H. North, Henry M. Butzel, Leland W. Carr, John E. Dethmers, Neil E. Reid, George E. Bushnell, Edw. M. Sharpe, Emerson R. Boyles.

[File endorsement omitted.]

[fols. 128-130] In Supreme Court of Michigan

Present the Honorable Edward M. Sharpe, Chief Justice; George E. Bushnell, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Henry M. Butzel, Leland W. Carr, Associate Justices.

44252

International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., et al., Plaintiffs,

vs.

James N. McNally, Wayne County Prosecuting Attorney, et al., Defendants and Appellants

Decree—June 29, 1949

This cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the Court, that the decree of the Circuit Court for the county of Wayne, in Chancery be and the same is hereby reversed, vacated and held for naught, and the bill of complaint dismissed. It is further ordered that no costs be awarded herein.

[fol. 131] In Supreme Court of Michigan

[Title omitted]

Order Allowing Appeal—September 26, 1949

The International Union of United Automobile Aircraft and Agricultural Implement Workers of America (UAW-CIO) and Emil Mazey, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Knack, Ralph Filecchia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick J. Johnston, Walter Rood, William T. Archer, [fols. 132-134] Michael Lacey, Harry Southwell, and Blaine Marfin, the above-named Plaintiffs and Appellees, having prayed for an allowance of an appeal to the Supreme Court of the United States from the final judgment rendered by the Supreme Court of the State of Michigan in the above-

entitled cause on June 29, 1949 and having presented and filed their petition for appeal, assignments of error and prayer for reversal and a statement as to jurisdiction on appeal, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

It is now ordered that an appeal be and the same is hereby allowed in the above-entitled cause as provided by law, from the Supreme Court of Michigan to the Supreme Court of the United States, and

It is further ordered that the Clerk of the Supreme Court of Michigan prepare and certify a transcript of the record in this cause, as may be designated by the appellants and appellees; and transmit the same to the Supreme Court of the United States so that the Clerk of said Court shall have said record within forty days from this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $250.00.

Fred M. Vinson, Chief Justice of the United States.

Dated: September 26, 1949.

[fol. 135] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—September 26, 1949

Now come the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., Emil Mazey, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Filecchia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick J. Johnston, Walter Rood, William T. Archer, Michael Lacey, Harry Southwell, and Blaine Marrin, the above-[fol. 136] named Plaintiffs and Appellees and in connection with their appeal herein, file the following assignment of errors, upon which they will rely in their prosecution of said appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Michigan, dated June 29, 1949. The Supreme Court of Michigan erred:

1. In holding that the provisions of Michigan Act 318, Public Acts of 1947 prohibiting the calling of a strike for

higher wages in an industry affecting commerce unless and until a majority of all employees in the collective bargaining unit have voted approval in a state conducted election, did not unconstitutionally invade the field of labor relations which Congress has occupied by the Labor Management Relations Act, 1947 (61 Stat. 136; 29 U.S.C. 141 et seq.).

2. In holding that the said strike vote provisions of the Michigan Act 318 did not conflict with the provisions of Labor Management Relations Act, 1947.

3. In holding that the provisions of the Michigan Act 318 which prohibit under criminal penalties employees and their representatives from "instigating" or "calling" or "causing" a strike for higher wages unless they first secure the approval of a majority of all workers in the bargaining unit, including those who do not vote and those not associated with them in their union, were not violative of the due process requirements of the Federal Constitution as invalid restrictions upon freedom of speech and of assembly and of collective bargaining and upon the right to quit work in concert.

[fols. 137-149] 4. In reversing the decree of the Circuit Court of Wayne County for the plaintiffs and in dismissing the Bill of Complaint.

Wherefore, plaintiffs-appellees pray that said judgment of June 29, 1949 be reversed.

Irving J. Levy, Joseph L. Rauh, Jr. Rauh and Levy, 1631 K Street, N.W., Washington 6, D. C. Harold A. Cranefield, 5707 Second Avenue, Detroit 2, Michigan. Attorneys for Plaintiffs and Appellees.

September 26, 1949.

[fol. 150] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 456

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY AND DESIGNATION OF THE RECORD—Filed November 28, 1949

In compliance with paragraph 9 of Rule 13 of the Rules of the Supreme Court of the United States as amended, Appellants submit herewith their statement of points on which they intend to rely and their designation of the record.

1. Appellants intend to rely upon the four points set forth in their Assignment of Errors and Prayer for Reversal filed in this Court on September 26, 1949.

[fol. 151] 2. Appellants deem the following parts of the record necessary for the consideration of the points on which they intend to rely.

(a) Record on Appeal in the Supreme Court of the State of Michigan.

(b) Opinion and Judgment of the Supreme Court of the State Michigan.

(c) Order of the Supreme Court of the United States Allowing Appeal.

(d) Assignment of Errors and Prayer for Reversal.

(e) This Statement and Designation.

Irving J. Levy, Joseph L. Rauh Jr., Rauh and Levy, 1631 K Street, N. W., Washington 6, D. C., Harold A. Cranefield, 5707 Second Avenue, Detroit 2, Michigan, Attorneys for Appellants.

Certificate of Service

I hereby certify that the foregoing statement of points on which appellants intend to rely and designation of the [fol. 152] record was served this 28th day of November, 1949 upon the Honorable Edmund E. Shepherd, Attorney for Gerald K. O'Brien and Stephen J. Roth, Appellees, by mailing a copy thereof to him at his office in Lansing, Michigan, postage prepaid.

Irving J. Levy.

November 28th, 1949.

[fol. 152a] [File endorsement omitted]

[fol. 153] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949.

No. 456

ORDER NOTING PROBABLE JURISDICTION—December 12, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Douglas took no part in the consideration or decision of this question.

[Endorsed on Cover:] Enter Joseph L. Rauh, Jr. File No. 54,205. Michigan Supreme Court, Term No. 456. The International Union of United Automobile, Aircraft and Argicultural Implement Workers of America, C.I.O., et al., Appellants, vs. Gerald K. O'Brien, Wayne County Prosecuting Attorney and Stephen J. Roth, Attorney General of the State of Michigan. Filed November 15, 1949. Term No. 456 O.T. 1949.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., ET AL.,
Appellants,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

STATEMENT AS TO JURISDICTION

IRVING J. LEVY,
JOSEPH L. RAUH, JR.,
HAROLD A. CRANEFIELD,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., EMIL MAZEY, IN HIS OWN BEHALF AND IN BEHALF OF 1776 EMPLOYEES OF THE CHRYSLER CORPORATION; NORMAN MATTHEWS, ARTHUR GRUDZEN, ALEX BARBOER, WILSON KUCK, RALPH FILECCIA, ALFRED S. MARCANGELO, RICHARD T. LEONARD, LEONARD McPHERSON, FREDERICK JOHNSTON, WALTER ROOD, WILLIAM T. ARCHER, MICHAEL LACEY, HARRY SOUTHWELL, AND BLAINE MARRIN,

Appellants,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN

No. 44,212

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the appellants submit herewith their statement showing the basis of the

jurisdiction of the Supreme Court of the United States to entertain an appeal in this case. The date of the judgment entered by the Supreme Court of Michigan is June 29, 1949.

Jurisdiction

The statutory jurisdiction of the Supreme Court of the United States to review the judgment in this case by direct appeal is conferred by Sec. 1257 (2) of Title 28, U.S.C. The following cases are believed to sustain the jurisdiction of the Supreme Court:

La Crosse Telephone Corp. v. *Wisconsin Employment Relations Board*, 336 U.S. 18;

Bethlehem Steel Co. v. *New York State Labor Relations Board*, 330 U.S. 767;

Hill v. *Florida*, 325 U.S. 538;

Hines v. *Davidowitz*, 312 U.S. 52;

International Union, U.A.W.A., A.F. of L., Local 232, et al. v. *Wisconsin Employment Relations Board, et al., 336 U.S. 245;*

Thornhill v. *Alabama*, 310 U.S. 88;

Pollock v. *Williams*, 322 U.S. 4;

Thomas v. *Collins*, 323 U.S. 516.

State Statute Involved

The statute of the State of Michigan which was held to be valid by the highest court of the State, but which the appellants contend is unconstitutional and invalid, is Act No. 318, Public Acts of Michigan, 1947 (Act No. 176, Public Acts 1939, as amended; Michigan Statutes Annotated, 1947, Cum. Supp., Secs. 17.454 (1) *et seq.*), particularly Secs. 9, 9a, 9b, 9c and 22 which sections are set forth in Appendix "A" attached hereto.

The Issues and the Rulings Below

The amended complaint (R. 49) was filed in the Circuit Court of Wayne County, Michigan, on May 29, 1948, by

the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O. (hereinafter referred to as the UAW-CIO), the Acting President of the Union appearing in his own behalf and in behalf of 1776 members of the Union employed by the Chrysler Corporation, and certain other officers and members of the UAW-CIO. The defendants were James N. McNally, the Wayne County Prosecuting Attorney and Eugene F. Black, the Michigan Attorney General.[1] The essential allegations of the amended complaint are summarized in the following paragraphs.

Some 65,000 members of the UAW-CIO are employed by the Chrysler Corporation in its Michigan plants, and in plants of the corporation in Indiana and California (R. 49, 52-53); in which automotive products are produced for commerce, as defined by the Labor-Management Relations Act, 1947 (61 Stat. 136; 29 U.S.C. Secs. 141-197) (R. 52). The UAW-CIO, the certified (by the National Labor Relations Board) collective bargaining representative of all production and maintenance employees (Ex. 4, R. 108), has a collective bargaining agreement with the Corporation (R. 53). In 1948 a wage dispute existed between the plaintiffs and the corporation (R. 51). The plaintiffs, having fully complied with the notice, bargaining and mediation requirements of Section 8(d) of the Federal Labor Management Relations Act, decided to strike in support of its wage demands (R. 53). The strike was called and put into effect pursuant to the "urging and instigation" of the plaintiffs (R. 52).

Secs. 9, 9a, 9b and 9e of Act 318, Public Acts of Michigan

[1] Gerald K. O'Brien succeeded James N. McNally as Prosecuting Attorney of Wayne County, and Stephen J. Roth succeeded Eugene F. Black as Attorney General of Michigan in January, 1949 prior to the consideration of the cause in the Supreme Court of Michigan. A formal order of substitution was entered by the Michigan Supreme Court on September 21, 1949.

1947, commonly known as the Bonine-Tripp Act, provide that "no strike or lockout shall take place or be put into effect" until specified "steps" and "requirements" are complied with:

(a) If the parties cannot settle their dispute, "the employees or their representative, in the case of impending strike" must notify the State Mediation Board of the issues involved "not less than ten days before the strike . . . is to become effective . . ." Sec. 9(1). Mediation is then to proceed.

(b) If it becomes apparent to the State Board, or if the Board is notified by either party that no further efforts at settlement are likely to be effective, the Board is to conduct an election within ten days. The expenses of such election are to be defrayed by the parties to the dispute. Sec. 9a.

(c) "Every employee in the bargaining unit"—the State Board is required by Sec. 9e to "determine" the "bargaining unit"—"shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees in such bargaining unit must vote in favor of such action." Sec. 9a.[2]

(d) Sec. 9 b provides that "it shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of

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[2] The provisions with respect to the expenses of the election and the composition of the majority who must approve the strike were changed by amendments to the Michigan Act in 1949 (Act. No. 230 Public Acts of 1949). The state now bears the expenses of the election. The 1949 amendments also change the definition of the majority who must approve the strike. The statute now requires that a "majority of all employees casting valid ballots" must vote in favor of strike action. However, under Michigan law the change in the statute does not release plaintiffs from liability for the penalties incurred by their action under the earlier statute. The earlier statute is "treated as still remaining in force" for the purpose of prosecution for any violations committed while it was in effect. Mich. Stats. Ann., Ch. 5, Sec. 2.214.

the business during the entire period in which the respective steps required by Section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a."

Section 22 makes violations of the act criminal offenses. It provides that "any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect. . .without first having served notice as required in section 9 of this act, . . . or while an election is pending under said section 9, . . ." shall be punished by fine up to $1,000.00 or imprisoned for not more than six months, or by both.

The complaint further alleges that the State Board demanded that the plaintiffs and members of the Union who were employees of the Chrysler Corporation submit to an election, that a strike was called "while said election was pending" within the meaning of the Act (R. 52), and that defendants threatened to prosecute all persons instigating or causing a strike, prior to authorization by an election (R. 53-54).

The complaint further alleges that sections 9, 9a and 22, as threatened to be applied to the plaintiffs, are unconstitutional and void upon the following two principal grounds:

(1) The prohibition of any strike until a majority of the entire collective bargaining unit has voted its approval conflicts with the provisions of the Federal Labor Management Relations Act, 1947 and Article I, Section 8, Clause 3 of the Federal Constitution (R. 55; see also R. 18).

(2) The prohibition of any strike until a majority of the entire collective bargaining unit has voted its approval deprives the plaintiffs of due process of law under the Fourteenth Amendment of the Federal Constitution in that it constitutes an unreasonable infringement upon their rights

of freedom of association, of speech and of collective bargaining and their liberty of contract (R. 54-55).

Plaintiffs asked for a determination that the strike vote requirements of Sections 9, 9a and 9b (R. 57) were invalid and, to prevent irreparable injury, prayed for an injunction to enjoin prosecution (R. 56-57).

A motion to dismiss (R. 62) for lack of jurisdiction was denied by the Circuit Court (R. 65); a copy of the court's opinion is attached hereto. A temporary injunction was granted against the defendants continuing the terms of a restraining order theretofore issued (R. 67).

The answers of the defendants (R. 69, 76) were, in general, denials of information sufficient to form a belief as to most of the allegations of the complaint. The defendant Prosecuting Attorney admitted "he will prosecute all persons who in said county violate the penal provisions of Act No. 318 of the Michigan Public Acts, 1947" (R. 78). The defendant Attorney General admitted that he and the Prosecuting Attorney "have threatened to enforce the penal provisions of the statutes and laws of this State against violators of said statutes and laws" (R. 73) and that "if said plaintiffs or others violate the laws of the State of Michigan they will be subjected to prosecution" (R. 74-75).

Both defendants denied the allegations as to unconstitutionality (R. 73, 74, 78).

The case was tried to the Circuit Court without a jury on July 15, 1948 (R. 1-48). Evidence was presented concerning the wage issues in the strike (R. 9), the compliance by plaintiffs with the requirements of the Union's constitution in calling the strike (R. 14-15, 19-20), and the adverse effect upon the right to strike and upon collective bargaining of requiring a prior strike vote in which approval must be obtained of the majority of all employees in the unit, including those who are not members of the Union (R. 3).

It was shown that the UAW-CIO was the recognized representative of the employees of the Chrysler Corporation (R. 16), that the collective agreement covered plants in Indiana and California as well as in Michigan (R. 17; see also Ex. 4, R. 108), that the company's activities affected interstate commerce (R. 2, 17), and that plaintiffs complied with the notice, bargaining and mediation requirements of Section 8(d) of the Labor Management Relations Act, 1947 (R. 27).

On August 3, 1938 Circuit Judge Theodore J. Richter filed his opinion (R. 86), and on August 11, 1948 the decree for plaintiffs was filed (R. 92). The Circuit Judge held that the limitations imposed by the Michigan statute upon the right to strike and to counsel a strike were unconstitutional invasions of rights protected by the due process clauses of the State and Federal Constitutions (R. 90). The Circuit Judge held also that collective bargaining rights and procedures of the Federal Labor Management Relations Law were impaired by the state act (R. 91). The Court, therefore, enjoined the prosecution of the plaintiffs for failing to comply with the requirements of the Act (R. 91-94). A copy of the Court's opinion is attached.

Defendants appealed. The Michigan Supreme Court, on June 29, 1949, reversed and dismissed the bill of complaint. The Michigan Supreme Court considered all questions raised under the Federal Constitution and laws and decided them adversely to the plaintiffs. The opinion of the Michigan Supreme Court, a copy of which is appended hereto, held that it was not "an unreasonable exercise of the state's police power to forbid resort to a strike which is not approved by a majority of the employees involved. . ." The Court held that the application of the challenged provisions of the statute to the plaintiffs would not deny them any protected freedom of speech or due process of law either under the State or Federal Constitutions. The Court,

relying largely upon the decision of this Court in *International Union, U.A.W.A., A. F. of L., et al. v. Wisconsin Employment Relations Board, et al.*, 336 U. S. 245, held further that there was no conflict between the provisions of the Michigan Act and the Federal Labor Management Relations Act, and no conflict with the Commerce Clause. The Court recognized that the strike involved plants in Indiana and California and that "some employees of the Chrysler Corporation who would be classed in the same bargaining unit are employed by the corporation in Indiana and some in California", but it held that these facts could not affect the power of Michigan "incident to a strike which is located in this state."

The Federal Questions Presented Are Substantial

This appeal presents two federal questions, each of which is substantial:

I. Whether the provisions of the Michigan statute prohibiting the calling of a strike for higher wages in an industry affecting interstate commerce unless and until the majority of all employees in the collective bargaining unit have so voted in a state-conducted election, conflict with the provisions of the Labor Management Relations Act, 1947.

II. Whether the State of Michigan may, consistent with the due process requirements of the Federal Constitution, restrict the freedom of speech and of assembly and of collective bargaining and the right of employees to quit work in concert, by prohibiting, under criminal penalties, workers and their union representatives from "instigating" or "calling" or "causing" a strike to secure higher wages unless they first secure the approval of a majority of all workers in the bargaining unit, including those who do not vote and those who are not even associated with them in their Union.

The Michigan Statute Invades the Field of Labor Relations in Industries Affecting Commerce Which Congress Has Occupied and Its Provisions Conflict With the Labor Management Relations Act, 1947

(1) In enacting the Labor Management Relations Act, 1947, Congress passed comprehensive legislation regulating labor relations in industries affecting interstate commerce. In Section 1(b) Congress indicated its broad purposes

> "to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

Succeeding sections of the Act and its legislative history show that after an extensive inquiry into the entire field of labor relations Congress formulated a comprehensive regulatory scheme prescribing the rights, duties, liabilities and immunities of labor and management which it believed would achieve its stated objects. The Labor Management Relations Act, 1947, is in effect a labor code governing labor management relations which affect commerce. Where Congress intended that particular issues were to be left to state control it specifically so provided.[3] In all other respects Congress occupied the field.

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[3] Section 14(b) expressly reserves to the states the power to prohibit closed or union shop agreements. See *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301. Congress also specifically left with the states the power to use their mediation and conciliation services to help the federal conciliation agencies in labor disputes affecting commerce. Secs. 202(c) and 8(d)(3). In like vein

In the field of strikes in industries affecting commerce, Congress, after considering many proposals to limit the objectives and procedures for which concerted strike action might legally be taken,[4] enacted several specific provisions dealing with strikes in industries affecting commerce:

(a) Congress carefully listed certain types of strikes and made them unfair labor practices. Section 8 (b)(4). Not content with this, Congress made labor organizations liable for damages resulting from such forbidden strikes, Section 303.

(b) Congress also imposed procedural requirements conditioning the legality of strikes in industries affecting commerce. Under Section 8(d) no strike to terminate or modify a collective agreement is permissible in the absence of a sixty-day notice to the other party, notices to federal and state mediation agencies and *bona fide* negotiations in the intervening period. In addition to making the failure to follow these procedural steps unfair labor practices, striking employees in such circumstances lose status as employees and the right to reinstatement.

(c) Congress made special provision for strikes in "national emergencies". Sections 206-210. In the event such strikes are threatened, the National Labor Relations Board is directed to take a secret ballot of employees to determine whether they wish to accept the final offer of the employer for settlement of the dispute. Although the results of such elections are certified to the Attorney General, no majority vote is required to make lawful a strike which results thereafter.

Section 10(a) of the original National Labor Relations Act was amended to permit the National Board to cede jurisdiction in a limited area of industry which is "predominantly local in character" but only where there was no conflict between the applicable state and federal law.

[4] See Senate Report No. 105, 80th Cong. 1st Sess. pp. 13-15.

These provisions of federal law governing strike action in industries affecting interstate commerce must be regarded under decisions of this Court as a plain indication that the Federal Government has occupied the field and the state may not therefore interpose other or different regulations. *La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *Hill* v. *Florida*, 325 U. S. 538; *Hines* v. *Davidowitz*, 312 U. S. 52.

(2) The strike vote requirements of the Michigan Act are plainly inconsistent with the policy of Congress unmistakably demonstrated by its rejection of a proposal to impose a similar requirement for strike votes. The Hartley bill as it passed the House (H.R. 3020, 80th Cong., 1st Sess.) contained provisions making it an unfair labor practice to direct or call any strike without authorization from a majority of the employees voting by secret ballot. Section 8(e)(8). This provision—which was even less restrictive than the Michigan requirement since approval was required only of "a majority of those voting" and not of a majority of those eligible to vote in the bargaining unit—was rejected by Congress, and the Labor Management Relations Act, 1947 as finally enacted has no such requirement. See Senate Report No. 105, *supra*, pp. 13-15. The express rejection by Congress of such a restriction upon the right to strike requires the conclusion that the contrary policy adopted by the State of Michigan must yield. *Hill* v. *Florida*, 325 U. S. 538, 541; *Hines* v. *Davidowitz*, 312 U. S. 52.[5]

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[5] Even a five-day "cooling-off period" required by the Michigan Labor Relations Act of 1939 before it was amended in 1947 was held to be invalid because it conflicted with the right to strike conferred by Section 7 of the National Labor Relations Act. *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. (2d) 465 (C.C.A. 6, 1947) cert. den. 332 U. S. 762.

(3) The strike vote requirements of the Michigan Act are plainly inconsistent with Sections 7 and 13 of the Labor Management Relations Act granting employees in industries affecting commerce the right to strike to obtain legitimate economic objectives. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333.[6] See also *National Labor Relations Board* v. *Draper Corp.*, 145 F. (2d) 199 (C. C. A. 4). No recognized limitations upon these federally protected rights are involved in the instant case. There is no question that the Chrysler strike was called for a legitimate purpose—to secure increased wages. No concerted action of a kind held illegal in such cases as *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240 or *Southern S. S. Co.* v. *National Labor Relations Board*, 316 U. S. 31 is here involved. Plaintiffs resorted to all means of mediation provided by federal and state agencies and bargained fully with their employer. They met all the conditions precedent required by the federal statute. Their federally protected rights cannot be vitiated by the action of the State of Michigan.

(4) The Michigan strike vote provisions upheld by the State Supreme Court in the instant case conflict with the Labor Management Relations Act in still another equally important respect. Under Section 9e of the Michigan statute, the bargaining unit in which the strike vote is to be taken must be determined by the State Mediation Board. It is provided, however, that "if the group of employees involved in the dispute has been recognized by the employer

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[6] The 1947 amendments did not withdraw the protection given to such strikes by the original National Labor Relations Act; they merely excepted the kind of strikes made unlawful by Section 8(b)(4) of the Labor Management Relations Act. Section 2 (3) of the 1947 Act, like the same section of the original act, protects the status of employees who cease work as a result of a "labor dispute".

or identified by certification, contract or past practice, as a unit for collective bargaining, the board shall adopt such unit." In the case of the Chrysler Corporation, the unit by National Labor Relations Board certification and by contract with the corporation covers employees at plants not only in Michigan but also in Indiana and California (Ex. 4, R. 108). The State of Michigan could not include these out-of-state employees in the unit for a strike vote. Consequently, the bargaining unit under the Michigan statute would necessarily be a different one from that determined by the National Labor Relations Board under Section 9(b) of the Labor Management Relations Act, 1947 to "assure to employees the fullest freedom in exercising the rights guaranteed by this Act."

This Court held in *La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board, supra*, that in view of Section 9(b) of the Federal Act a state was not free to fix a unit for purposes of collective bargaining covering employees in industries affecting commerce even where the National Labor Relations Board had not acted in the particular case. Here the conflict is even more apparent, for the National Board has certified a collective bargaining unit for the Chrysler Corporation which the state statute does not and cannot adopt.

(5) *International Union, U.A.W.A., A.F. of L., Local 232, et al.* v. *Wisconsin Employment Relations Board, et al.*, 336 U. S. 245, did not, as the Michigan Supreme Court seemed to think, determine the question here presented. This Court in the *International Union* case considered the "unannounced stoppage of work to win unstated ends" not to be a strike,[7] but rather a form of illegal activity similar to the kind of concerted activities held unprotected

[7] "To call these stoppages a strike we would have to ignore petitioners' own conception of this activity. As we have shown, they adopted this technique precisely because it was believed to be 'better . . . than a

in such cases as *National Labor Relations Board* v. *Fansteel Metallurgical Corporation* and *Southern S.S. Co.* v. *National Labor Relations Board, supra.* The Court affirmed the power of the State of Wisconsin over "coercive conduct" involving tactics in a work stoppage concerning which it found the federal act silent and the federal board powerless to deal "in any manner". The Court did not suggest that a state could so condition "the exercise of the unquestioned right to quit work" (quoting from the *Fansteel* opinion) that strikes in industries affecting commerce could be prohibited regardless of their objectives or the entirely peaceful and traditional method of their execution. Since the Court was not dealing with a strike in the International Union case, it did not examine into the extent that the Labor Management Relations Act, 1947 preempts the field in the case of strike action in industries affecting commerce, or the express rejection by Congress of a strike vote requirement as related above.[8]

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strike.'" *International Union U.A.W.A., A.F. of L., Local 232 et al* v. *Wisconsin Employment Relations Board, et al., supra*, ft. nt. 17, p. 264. In fact, the order of the Wisconsin Board under review expressly excepted from the action restrained the "leaving [of] the premises in an orderly manner for the purpose of going on strike."

[8] The National Labor Relations Board filed a brief *amicus curiae* in the *International Union* case in support of the petition for rehearing. The Board argued that state action was excluded even with respect to the "coercive conduct" as described in the Court's opinion. The Board made it quite clear, however, that it considered state intervention in strike action a wholly different case and one in which Congress had even more clearly preempted the field. The brief states (p. 56-57):

"Are the states empowered to reverse this Congressional judgment and to require as a matter of state law that strikes be preceded by a majority vote of the employees? Are states empowered to enjoin strikes affecting interstate industry which do not conform to such provisions?

. . . . . .

"Could a state . . . enjoin strikes not preceded by a state-imposed cooling-off period, or by notice to the employer? State requirements such as these, dealing with the 'method' by which work stoppages can occur, would clearly stand as an obstacle to the effectuation of federal policy."

(6) If the decision below is permitted to stand, the purpose of Congress to provide a uniform policy for labor relations in industries affecting commerce can be frustrated by state action which may substitute the diverse views of state legislatures as to treatment of labor relations in the various states. In fact, under the decision of the Michigan Supreme Court individual states can affect and even negate the labor relations policies of sister states. The instant case is a good example. The State of Michigan in this case has imposed a requirement which affects the employees of a corporation with plants in three states, all of whom are joined in a single union for purposes of collective bargaining under federal law. The members of plaintiff union who are employees of the Chrysler Corporation in Indiana and California would not participate in the Michigan strike vote. Yet their collective bargaining rights would be curtailed by an adverse strike vote in Michigan.

This Court, in the *Bethlehem Steel* and *La Crosse Telephone Corp.* cases, has recognized the Congressional policy in both the Wagner Act and the Labor Management Relations Act, 1947 that labor relations in industries affecting interstate commerce should not be governed by the diverse views of forty-eight legislatures. To hold, as the Michigan Supreme Court did, that the entire question of the right to strike is one which the states may regulate and control, would require the conclusion that Congress, in its comprehensive legislation in 1947, failed to adopt a policy with respect to perhaps the most important single aspect of labor relations.

(7) All of the above questions are implicit in the issue raised by this appeal. It is respectfully submitted that they present a most substantial federal question.

II

The Michigan Statute Violates the Due Process Clause of the Fourteenth Amendment

The Michigan statute, which the Supreme Court of the State held to be consistent with the Fourteenth Amendment, prohibits all strikes unless a majority of the employees in the applicable bargaining unit vote in favor of the action. The statute is not limited to strikes which may "imperil the national health or safety" (Secs. 206-210, Labor Management Relations Act, 1947) or otherwise adversely affect the public; indeed, an entirely separate procedure is presented in Section 13 of the statute for public utilities and hospitals. What Sections 9, 9a and 22 of the Michigan statute do is to forbid all strikes in all industries regardless of the provocation unless a majority of the collective bargaining unit has voted in favor of the action. So sweeping a legislative fettering of the right to strike cannot be justified under the Fourteenth Amendment. Cf. *Nebbia* v. *New York*, 291 U. S. 502, 525; *Schneider* v. *State*, 308 U. S. 147, 162; *Pollock* v. *Williams*, 322 U. S. 4.

This is not a case of union activity to accomplish an unlawful result. See *Giboney et al* v. *Empire Storage & Ice Co.*, 336 U. S. 490. Nor is it a case where, although the objective is lawful, the strike is attended by violence. See *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287. What is before the Court here is a prior restraint on a peaceful strike for a lawful purpose and upon the speech, assembly and collective bargaining which induce that strike. Such a restraint upon plaintiffs' rights of free speech, free assembly and free collective bargaining cannot stand. *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson*

v. *California*, 310 U. S. 106, *American Federation of Labor* v. *Swing*, 312 U. S. 321. *Thomas* v. *Collins*, 323 U. S. 516.

Furthermore, the requirement that a majority of the *entire bargaining unit* must vote approval before strike action is taken is a wholly unreasonable method of accomplishing the legislative purpose, even assuming that the over-all requirement of a fair strike vote is within the police power of the state. The bargaining unit adopted by the state board is not, as we have already seen, the actual bargaining unit that negotiates with the Chrysler Company. Even more significant, the rights of the employees who desire to strike and who vote their approval will be adversely affected by those persons in the bargaining unit who are unable to cast their ballots because of illness, absence or otherwise. Furthermore, the ability of the plaintiff Union to carry out successful collective bargaining with the company will be adversely affected by the action or inaction of the non-Union employees in the bargaining unit. A strike vote based on a majority of an artificial unit which does not bargain and which includes the sick and the absent as well as the non-Union employees has no reasonable relation to the ends in view and thus deprives plaintiffs of their liberty without due process of law. Cf. *Western & A.R.R.* v. *Henderson*, 279 U. S. 639; *Treigle* v. *Acme Homestead Ass'n*, 297 U. S. 189, 197; *Schneider* v. *State*, 308 U. S. 147, 162.

No decision of this Court deals directly with the question at hand. Similar restraints upon the right to strike have, however, been declared unlawful under the due process clause by a statutory federal district court and by the highest courts of two states. See *Stapleton* v. *Mitchell*, 60 F. Supp. 51 (D. Kan. 1945); *Alabama Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810; *American Federation of Labor* v. *Bain et al.* 165 Ore. 183, 106 P.

(2d) 544. The federal question presented under the Fourteenth Amendment is plainly a substantial one.

Respectfully submitted,

IRVING J. LEVY,
JOSEPH L. RAUH, JR.,
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Counsel for Appellants.

SEPTEMBER 26, 1949.

APPENDIX A

Michigan Statute

Act No. 176 of the Public Acts of 1939, as amended by Act No. 318 of the Public Acts of 1947

Sec. 9. No strike or lockout shall take place or be put into effect until and unless each of the steps have been taken and the requirements complied with as provided in this act.

1. In the event the parties thereto are unable to settle any dispute, the employees or their representative, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice upon the board of such dispute together with a statement of the issues involved. Said notice may be served personally on any member of the board and a copy thereof personally served upon the other party, or sent by registered mail to the board at a regularly established office thereof and to the employer at his regular address not less than 10 days before the strike or lockout is to become effective, or in case of an industry affected with a public interest or a public utility or hospital, said notice shall be so served not less than 30 days before the strike or lockout is to become effective.

2. Upon receipt of such notice it shall be the duty of the board to exercise the powers herein granted to effect a settlement of such dispute by mediation between the parties. Prior to the calling of an election as provided hereinafter, it shall be the duty of each of the parties to such dispute to actively and in good faith participate in the mediation thereof. At least 1 member of the board, to be designated by the chairman, shall actively participate in the negotiations to mediate any dispute in an industry affected with a public interest including any public utility or hospital.

Sec. 9a. In the event that it becomes apparent to the board that there is no reasonable probability of settlement of such dispute by mediation and that further efforts

to that end would be without avail, there shall be held in the case of any impending strike, an election upon such issue which election shall be conducted and supervised by the board. In the event either party to said dispute notifies the board in writing, a copy of which shall at the same time be served on the other party, that in the opinion of such party, further efforts to settle such dispute by mediation would be without avail, it shall be the duty of the board to cause an election to be held within 10 days of the receipt of such notice unless it is not practical to hold such election within said period, in which event said election shall be held within 20 days of receipt of such notice: PROVIDED, That such board need not call more than 1 election involving the issues set forth in the notice served upon the board. The expense of such election shall be defrayed by the parties to such dispute either equally or upon such other basis as may be agreed upon. Every employee in the bargaining unit shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees in such bargaining unit must vote in favor of such action. Said election shall be by secret ballot, and shall be held on the premises where those voting are employed. The board shall have the power and authority to promulgate such rules and regulations as shall be necessary to effectively conduct any election and the wilful violation of any such rules and regulations shall be a violation of the provisions of this act.

SEC. 9b. It shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a.

SEC. 9c. The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit,

or a plant unit, or a subdivision of any of the foregoing units: PROVIDED, HOWEVER, That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for collective bargaining, the board shall adopt such unit.

SEC. 22. Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, or who shall cause or call a lockout, without first having served notice as required in section 9 of this act, or while mediation is pending as prohibited by this act, or who shall knowingly and tion is pending under said section 9, or while arbitration proceedings are pending under sections 9d and 13 of this act, or any person who shall engage in unauthorized picketing as prohibited by this act, or who shall knowingly and wilfully violate any of the rules or regulations promulgated under section 9a and section 9c, or any of the provisions of section 9f, shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

APPENDIX "B"

Findings and Opinion of Circuit Court Denying Motion to Dismiss and Granting Temporary Injunction

At the hearing of the Order to Show Cause upon the issuance of a temporary injunction in this cause, the defendant moved to dismiss the Bill of Complaint.

It was argued that the jurisdiction in equity to enjoin the prosecution of criminal proceedings existed only as an incident of jurisdiction otherwise acquired; that the defendant had made no threat to prosecute any of the plaintiffs; and that the plaintiffs make no allegations that they have violated or intend to violate any penal provision of Act No. 318, Michigan Public Acts of 1947.

I find all of these contentions without merit. The jurisdiction of equity to protect property and civil rights against irreparable injury where the legal remedy is inadequate is clearly established. General Motors Corporation v. Attorney General, 294 Mich. 558, 564; Truax v. Raich, 239 U. S. 33, 37.

The Bill of Complaint adequately alleges that an election has been demanded by the State Board of Labor Mediation and that the plaintiffs as individuals and in association desire to urge that the Chrysler employees in the County of Wayne go out on strike and stay out on strike until a collective bargaining agreement is reached, and that Sections 9, 9a, and 9b of the statute make such strike unlawful, and Section 22 imposes criminal penalties for instigating such a strike while mediation or election is pending.

The law clearly penalizes what the plaintiffs desire to do, and this raises a serious question of whether the plaintiffs are threatened with the impairment of their constitutional rights.

The remedy by defending against criminal proceedings is clearly inadequate. The excellent statement on this subject by U. S. Circuit Judge Murrah, for the Court in Stapleton v. Mitchell, Atty. Gen. 60 Fed. Supp. 51, 61, is worthy of quotation:

> "In this setting we think it is the inherent prohibitions of the statute standing alone which impose the unconstitutional restraint, and those against whom the statute is plainly directed should not be required to abide the processes of criminal justice in order to obtain the redress to which they are entitled under the Federal Constitution."

The mere silence of the Prosecuting Attorney should not avail to keep the plaintiffs in jeopardy. The Attorney General intervening at the hearing has settled any question concerning prosecution or the threat thereof by announcing in open court he would require prosecution under the law unless such action was enjoined. Thereupon, plaintiffs' counsel stated that he would amend his Bill to show this.

The motion to dismiss is denied, and a temporary injunction may issue continuing the terms of the restraining order.

May 22, 1948.

THEODORE J. RICHTER,
Circuit Judge.

APPENDIX "C"

Opinion of the Circuit Court

The plaintiffs, the International Union of Automobile, Aircraft and Agricultural Implement Workers, C.I.O., generally known as the U. A. W., C.I.O., Emil Mazey, its acting President, for himself, the Union members, and for 1776 Chrysler employees, together with other Union officers, and other industrial employees who were leaders in recent strikes, bring this bill in equity to restrain the Prosecuting Attorney of Wayne County, and the Attorney General, who appeared by intervention, from taking criminal proceedings against the members of the U.A.W., C. I. O., based upon alleged violations of those provisions of Act 318, P.A. 1947, which declared unlawful strikes instituted without first securing approval by a majority of the employees in the State in the collective bargaining unit of the plant involved in an election held in accordance with the statute and which subject to criminal penalties persons who call or instigate a strike while the election is pending. The statute also provides for the civil remedies of injunction and damages on account of strikes so made unlawful.

The case was fully tried, and exhaustive and able briefs were filed.

On the part of the plaintiffs it is claimed that their rights of liberty and property are impaired contrary to Sections 4 and 16, Article II of the Michigan Constitution, and the due process clause of the Fourteenth Amendment of the Federal Constitution, and that the provisions complained of are repugnant to the collective bargaining rights granted

to the unions under the Taft-Hartley Act and to the prescriptions of that law in support of these rights.

The evidence shows that there have been and will be numerous violations of the election requirements of Act 318 P.A. 1947 on the part of the plaintiffs and U.A.W. members, and by the very terms of the Statute it would seem that prosecutions can be, and if the statute is valid, should be sufficiently vigorous and extensive to prevent a strike not authorized by the statute. Consequently, the plaintiffs may complain not merely of a specific instance in which their rights may be impinged, but "of the pervasive threat inherent in its (the statute's) existence." *Thornhill* v. *Alabama*, 310 U. S. 88, 97. Obedience to the statute involves the continuous sacrifice of the rights claimed. In this situation the jurisdiction of equity to determine the validity of this law is peculiarly applicable, for if it is invalid it involves a continuous impairment of the right to associate in common action to withhold labor as a means of obtaining a better wage bargain. The rights involved are of equal dignity with those to conduct a business. Against the serious claim that the statute, on its face impairs fundamental civil rights, a determination of that claim by a court of equity is most appropriate.

The defendants in their briefs contend only that the right to strike is not absolute, but may be subjected to limitation. But the briefs submitted in their behalf are noteworthy, in that they disclose no case which approves the qualification in question here. On the other hand, counsel for the plaintiffs narrow their claims down to the specific limitations here involved. They insist that there is not involved the power of the state to qualify the right to strike for a purpose which might be made unlawful, or in a business coupled with a public interest, nor in the face of some public emergency. Other sections of the statute deal with hospitals and public utilities and provide for compulsory arbitration of wage disputes in such cases. There is in question here the sweeping terms of the statute requiring a majority vote in the bargaining unit as a condition to the lawfulness of a strike in ordinary industry. The statute applies to all strikes without distinction as to purpose and to all occasions without regard to emergency. The question is whether the

right to strike for any group of employees may be made subject to the approval of a majority of the employees in the collective bargaining unit.

This question, I am persuaded, must be answered "No." It is not inherently reasonable that the right should exist with majority approval and be denied without it. So long as wage determination is a matter of bargaining between employers and employees, it is unreasonable to prevent by coercion of law any work stoppage by two or more employees acting in concert if they are dissatisfied with the conditions of employment. The right of a working man to induce his fellow employee to quit work with him for proper purposes is individual. He can scarcely be deprived of this right in all cases where he or others fail to persuade a majority to act with them. In *Beck* v. *Teamsters' Protective Union*, 118 Mich. 497, the Court stated:

> "So, also, the laborers have the right to fix a price upon their labor and to refuse to work unless that price is obtained. Singly, or in combination, they have this right. They may organize in order to improve their condition and secure better wages. They may use persuasion to induce men to join their organization or to refuse to work, except for an established wage."

That these rights are within the scope of constitutional protection is well expounded by the Supreme Court of Alabama in *Hotel and Restaurant Employees Alliance* v. *Greenwood*, 249 Ala. 265, 30 So. 2d 696. The numerous authorities therein cited render it unnecessary to repeat them here. The point is forcefully made that freedom of speech in respect to labor disputes is bound up with the necessary implication of freedom to carry into action what is urged.

> "It would be but a hollow principle to say a union is free to advertise a labor dispute by picketing but may not strike to enforce its demands. Scofes v. Helmer, 205 Ind. 596, 187 N.E. 662; 664."

Freedom of speech includes the right to induce others not to buy merchandise or perform services. *Carlson* v. *California*, 310 U. S. 106, 112.

In *Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. 2d 810, statutory provisions comparable with those in question here was held unconstitutional, and a three judge United States District Court held sections of the 1943 Kansas Labor Law substantially identical with the provisions here involved, to be unconstitutional. *Stapleton* v. *Mitchell*, 60 Fed. Suppl. 51. The Oregon Supreme Court held to be unconstitutional a law restraining picketing unless authorized by a majority of the employees in *American Federation of Labor* v. *Bain*, 165 Ore. 193, 206.

These decisions, which appear in no manner contradicted or qualified by others, impel me to hold that so much of Act 318 Public Acts of 1947 which require a strike vote and penalize the calling or instigating strikes while an election is pending are void as contravening the due process clauses of the State and Federal Constitutions.

It has been strongly urged that these provisions are repugnant to the Labor Management Relations Act (Pub. L. No. 101, 80th Cong. 1st Sess.), generally known as the Taft-Hartley Act. While the states retain their fundamental police powers in matters of local concern even in the face of Federal Legislation dealing with matters affecting commerce, this legislation qualifies the collective bargaining provisions of the federal Act in two important ways. The collective bargaining unit under the federal Act may extend to and include plants of a single industry in more than one state. Thus the collective bargaining under federal prescription is affected by an affirmative or negative strike vote in Michigan. Furthermore, the federal Act grants collective bargaining rights. Sec. 9(a) provides that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

The exercise of collective bargaining rights is controlled by the federal law, and this control cannot be impaired or modified by the states. Under existing conditions it is im-

possible to dissociate the strike from the process of collective bargaining.

The question of representation of the bargaining unit by the majority and the procedure conferring bargaining rights are all matters covered by this law, and any revocation of authority must be left to the Congress. The State cannot interfere with the representation policies provided by the Taft-Hartley Act.

A decree in accordance with this opinion, declaring unconstitutional the election requirements of the Bonine-Tripp Act and enjoining the defendants from enforcing criminally a violation thereof in respect to the plaintiffs may be prepared and submitted.

THEODORE J. RICHTER,
Circuit Judge.

Dated: August 2, 1948.

APPENDIX "D"

Decree of the Circuit Court

At a session of said Court held in the County Building in the City of Detroit, this 11th day of August, A. D., 1948. Present: The Honorable Theodore J. Richter, Circuit Judge.

This cause having come on to be heard upon the Bill of Complaint, Amended and Supplemental, and the Answers thereto and the Court having been fully advised in the premises, and it appearing that Section 22 of Act 318 Public Acts of 1947 subjects to criminal penalties any person who either individually or as one of a group of persons instigates a strike or who shall call or cause a strike to be placed in effect while an election is pending under Section 9; and Sections 9, 9a, and 9b require with respect to ordinary industrial enterprises not hospitals or public utilities the holding of an election for the purpose of taking a strike vote of the employees in the collective bargaining unit of the industries defined in said statute, and prohibit and make unlawful any strike unless in such strike vote the same shall be approved

by the majority of the employees in said collective bargaining unit and said strikes not so approved may be the subject of legal and equitable remedies as provided in Section 22a; and the Court having filed a written opinion determining the material facts and the applicable law; and that the rights and protection sought by the plaintiffs are in respect to subjects of collective bargaining, wages and conditions of employment and election requirements in the settlement of jurisdictional disputes pursuant to Section 9c are not involved; for the reasons in said opinion stated. upon motion of Rothe and Zwerdling, Harold Goodman of Counsel, attorneys for plaintiffs.

It is ordered, adjudged, and decreed, as follows:

1. That the provisions of Act 318 Public Acts of 1947 requiring the taking of a strike vote and making a strike unlawful unless the same shall first be approved by a majority vote in the collective bargaining unit, and subjecting to criminal prosecution any person who either individually or as one of a group instigates a strike or who shall call or cause a strike to be placed in effect while an election is pending under Section 9 of said Act, except insofar as the said provisions are or may be applied in respect to jurisdictional strikes as provided in Section 9c, are null and void as in contravention of Art II. Secs. 4 and 16 of the Constitution of the State of Michigan, of the 14th Amendment of the United States Constitution, and in application to any industry affecting interstate commerce, (in view of the National Labor Management Relations Act) of Art. 1, Sec. 8 (3) of the Constitution of the United States.

2. That the defendant, James N. McNally, as Prosecuting Attorney of said County, and Eugene F. Black, as Attorney General of the State of Michigan, be and they hereby are perpetually enjoined from prosecuting in said County of Wayne the plaintiffs, their officers, agents, and members for any alleged violations of the provisions of Act 318 Public Acts of 1947 declared unconstitutional in Paragraph 1 hereof.

3. Nothing herein contained shall prejudice or prejudge the application of Act 318 Public Acts of 1947 to hospitals or public utilities or jurisdictional strikes nor shall any part

or clause of said Act other than those within the scope of Paragraph 1 hereof be considered as in any manner affected by this decree.

THEODORE J. RICHTER,
Circuit Judge.

APPENDIX "E"

STATE OF MICHIGAN, SUPREME COURT

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., EMIL MAZEY, in his own behalf and in behalf of 1776 employees of the Chrysler Corporation, NORMAN MATTHEWS, ARTHUR GRUDZEN, ALEX BARBOUR, WILLIAM KUCK, RALPH FILECCIA, ALFRED S. MARCANGELO, RICHARD T. LEONARD, LEONARD MCPHERSON, FREDRICK JOHNSTON, WALTER ROOD, WILLIAM T. ARCHER, MICHAEL LACEY, HARRY SOUTHWELL AND BLAINE MARRIN, Plaintiffs and Appellees,

v.

JAMES N. MCNALLY, Wayne County Prosecuting Attorney, and EUGENE F. BLACK, Attorney General of the State of Michigan, Defendants and Appellants.

Before the entire bench.

NORTH, *J.*

Plaintiffs, commonly known and herein designated as UAW-CIO, and others, sought and obtained a decree enjoining the prosecuting attorney of Wayne County and the attorney general, who intervened as a defendant, from prosecuting criminal proceedings under Act No. 318, Pub. Acts 1947,* which criminal prosecutions were threatened under circumstances hereinafter noted. From the decree entered in the circuit court the defendants have appealed.

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* Act No. 176, Pub. Acts 1939, as amended; Stat. Ann. 1947 Cum. Supp. § 17.454 (1) et seq. We are not herein concerned with the latest amendment to this statute. See Act No. 230, Pub. Acts 1949.

A dispute involving wages arose between UAW-CIO union employees and their employer, the Chrysler Corporation. Resort was had to collective bargaining. The notices required by State and Federal law regulating labor disputes were given and mediation sessions between the respective parties followed. While such sessions were pending the union officers concluded that further mediation would be of no avail and thereupon gave notice to the representatives of the Chrysler Corporation that a strike would be called, and such strike did go into effect on the forenoon of the following day. The calling and putting into effect of this strike was obviously in violation of the terms of the statute about to be noted and rendered plaintiffs subject to threatened criminal prosecution, providing the statute is valid.

Act No. 318, Pub. Acts 1947, commonly known as the Bonine-Tripp act, provides that in the event the parties to a controversy such as here involved are not able to agree among themselves or that a solution and determination of their controversy cannot be reached by mediation or arbitration, before a strike may be called an election shall be held in accordance with the terms of the statute and the strike shall not be instituted unless "a majority of all employees in such bargaining unit * * * vote in favor of such action." Act No. 318, § 9a, Pub. Acts 1947. Section 22 of the act in part reads:

"Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, * * * while mediation is pending * * *, or while an election is pending, * * * shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment."

It is plaintiffs' contention that insofar as the statute makes the calling of an election and the affirmative vote of a majority of all employees in the bargaining unit involved in the labor controversy a prerequisite to calling or instituting a strike and provides a penalty for violation of the statute, it impairs the rights of plaintiffs in violation of

sections 4 and 16, Article II, of the Michigan Constitution, and the due process clause of the Fourteenth Amendment of the Federal Constitution, and further that the noted statutory provision is repugnant to the right of collective bargaining granted to unions under the National Labor Management Relations Act, i.e.—the Taft-Hartley Act. (61 Stat. 136; 29 U.S.C.A. 1948 Cum. Supp. §§ 141-197). On this appeal defendants have presented two questions, as follows:

"1. Do the election requirements of Act No. 318, secs. 9, 9a, 9b, and 9c, Pub. Acts 1947, known as the Bonine-Tripp Act, and the penal provisions thereof, sec. 22, violate plaintiffs' and appellees' rights of freedom of speech and due process of law as guaranteed by Art. II, secs. 4 and 16 of the Constitution of Michigan, 1908, and Amendments 1 and 14, U. S. Constitution?"

"2. Has Congress, in the National Labor Relations Management Act (Taft-Hartley Act), by its expressed intent therein, so preempted the field of regulation of labor-management relations in industries affecting Commerce that any State police power regulation of such relations in industries affecting Commerce must necessarily be in conflict with such federal law and therefore null and void?"*

In granting plaintiffs the injunctive relief prayed, the circuit judge placed decision on three grounds: That the statutory requirement of an election was (1) in violation of Article II, §§ 4 and 16 of the Michigan Constitution; (2) in violation of the Fourteenth Amendment of the Federal Constitution; and (3) as affecting interstate commerce in violation of Article 1, § 8 (3) of the Federal Constitution—in view of the National Labor Management Relations (Taft-Hartley) Act.

The recent decision of the United States Supreme Court in International Union, U.A.W., A.F. of L., Local 232 *v.* Wis-

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* Question number two is restated by appellees as follows:

"2. In view of the National Labor Management Relations Act and the provisions requiring collective bargaining by representatives in industries affecting commerce, was it within State authority to make a strike unlawful if not approved by a majority of the employees in the collective bargaining unit?"

consin Employment Relations Board, — U.S. — (decided February 28, 1949), is informative in the field of law pertinent to the instant case. For brevity we refer to the cited case as the Wisconsin case. That suit involved the constitutionality of the Wisconsin Employment Peace Act, the pertinent portion of which we quote in the accompanying footnote*. At the outset of the United States Supreme Court's opinion it is stated that the validity of the Wisconsin statute "is challenged because it is said to transgress constitutional limitations imposed by the Thirteenth and Fourteenth Amendments and by the Commerce Clause as implemented by the National Labor Relations Act (49 Stat. 449) and the Labor Management Relations Act of 1947." 61 Stat. 136; 29 U.S.C.A. 1948 Cum. Supp. §§ 141-197. Negotiations incident to a new collective bargaining contract between the employer, the Briggs & Stratton Corporation, and its employees reached a deadlock. Thereupon the union resorted to repeatedly calling union meetings during working hours and without warning the employees would leave their work and return at their pleasure. This occurred 26 times within approximately four and one-half months. This procedure had the desired effect of disrupting the employer's business, and as described by the union leaders was "a new technique for bringing pressure upon the employer" to obtain concessions incident to the union's demands made in the collective bargaining proceedings.

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* "The Wisconsin Employment Peace Act provides in part as follows:

"(2) It shall be an unfair labor practice for an employe individually or in concert with others: (a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family. * * * (c) To cooperate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike. * * * (h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike." Wis. Stat. (1947) c. 111 § 111.06.

The employer instituted proceedings before the Wisconsin Employment Relations Board. After prescribed procedure that board ordered the union to cease and desist from "engaging in any concerted efforts to interfere with production by arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours; or engaging in any other concerted effort to interfere with production of the complainant except by leaving the premises in an orderly manner for the purpose of going on strike."

The union sought and obtained in the Wisconsin courts review of the board's order. In the particular above noted the Wisconsin Supreme Court affirmed the board's order (250 Wis. 550; 27 N. W. 2d 875); and in that respect the United States Supreme Court affirmed the holding of the Wisconsin Supreme Court. While the issue in the Wisconsin case was not identical with that in the instant case, the reasoning and holding in that case are applicable to the case at bar.

Plaintiffs' first argument in support of their contention that the statute here involved is unconstitutional is stated in their brief as follows: "To prohibit by law calling or instigating a strike without distinction as to object or other circumstances is so unreasonable as to deny freedom of speech and due process of law."

As a sufficient refutation of this contention it need only be noted that the Bonine-Tripp act does not prohibit calling or instituting a strike incident to any legitimate labor controversy. Instead the act merely requires as a condition precedent to calling or instituting a strike the approval so to do expressed at an election by the vote of a majority of the employees in the bargaining unit. Quite universally there are three parties interested in and affected by a strike—the employer, the employees, and the public. Plaintiffs' statement in their brief concerning picketing is equally applicable to a strike:

"Nobody is really confused into thinking that picketing is not something more than speech or that the right to picket as supported by freedom of speech is not without limits."

In the Wisconsin case, supra, the ultimate decision was that the state might provide against undue coercion. A strike is not only a means of exercising the right of free speech, but it is likewise a medium of exercising coercion. As such it is subject to reasonable regulation by the state in the exercise of its police power. It may well be inferred that the legislature in enacting the statutory provision under consideration was at least to some extent motivated by a desire to prevent stoppage of work in a plant as to all of the employees, which stoppage was caused by a small number of employees in a key position going on strike. The detriment in such cases to the remaining majority of the employees, to the employer, and also generally to the public, is obvious; and the legislature might well have considered it a justifiable reason for restricting or limiting the union's right to institute a strike incident to collective bargaining proceedings as prescribed in the Bonine-Tripp act.

"Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility." South Carolina Highway Department v. Barnwell Brothers, Inc., 303 U. S. 177, 191.

"The most that can be said is that whether that determination was an unreasonable, arbitrary or unequal exercise of power is fairly debatable. In such circumstances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question." Zahn v. Board of Public Works, 274 U. S. 325.

"The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted. * * *

"But the circumstances that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. * * *

"We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist.'". Carpenters Union v. Ritter's Cafe, 315 U. S. 722.

We think it is not an unreasonable exercise of the state's police power to forbid resort to a strike which is not approved by a majority of the employees involved, and thereby protecting both the majority of the employees in the bargaining unit and the public. Nor is it a denial of free speech any more than is the limitation of certain other phases of action in labor controversies. Carpenters Union v. Ritter's Cafe, supra; Lincoln Union v. Northwestern Co., 335 U. S. 525. In disposing of a like contention in the Wisconsin case, *supra*, the court said:

"It is further contended that the statute as applied invades rights of free speech and public assemblage guaranteed by the Fourteenth Amendment. We recently considered a similar contention in connection with other state action concerning labor relations. *Lincoln Federal Labor Union et al.* v. *Northwestern Iron and Metal Co.*; and *Whitaker et al.* v. *North Carolina*, 335 U. S. 525 and *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538. For reasons there stated, these contentions are without merit."

The Wisconsin statute, which in its requirement of a majority vote of the employees of the bargaining unit is quite identical with the like provision in the Bonine-Tripp act, was held valid as against like contentions as herein presented, and re-hearing was later denied, in Hotel and Restaurant Employees' International Alliance, Local No. 122 v. Wisconsin Employment Relations Board, 236 Wis. 329; 294 N. W. 632; 295 N. W. 634. On appeal to the United States Supreme Court the decision of the Wisconsin court was affirmed. See 315 U. S. 437. In its opinion the Supreme Court of the United States said:

"The specific question for decision is the constitutional validity of an order made by the Wisconsin Employment

Relations Board acting under the Employment Peace Act, Wisconsin Laws of 1939, c. 57. * * *

"What public policy Wisconsin should adopt in furthering desirable industrial relations is for it to say, so long as rights guaranteed by the Constitution are respected. *Aikens* v. *Wisconsin*, 195 U. S. 194; *Senn* v. *Tile Layers Union*, 301 U. S. 468. As the order and the appropriate provisions of the statute upon which it was based leave the petitioners' freedom of speech unimpaired, the judgment below must be affirmed."

It is worthy of note that the United States Supreme Court in its opinion literally quoted the provision of the Wisconsin statute which makes it " 'an unfair labor practice' " to " 'Cooperate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike' * * *."

As pertinent to the issue in the instant case we quote the following from the opinion of the Wisconsin supreme court in the Hotel and Restaurant Employees' Local No. 122 case, 236 Wis. 329, 345:

"We find nothing in the act which prevents a minority of a collective-bargaining unit from withdrawing from employment either singly or in concert. (For like provision in the Bonine-Tripp act, see § 13a.) * * *

"The petitioners complain that the characterization of the acts of employees as unfair labor practices cannot be made to depend on the action of a majority of a collective-bargaining unit; that the legislature cannot place it within a power of a majority of the collective-bargaining unit to authorize a strike. This argument is an attack upon a principle which is fundamental in the attempt of the legislature and of congress to regulate labor relations. The principle upon which authorized collective bargaining depends is that the rule of the majority within an appropriate collective-bargaining unit shall bind the minority. We see no way by which the principle of collective bargaining can be maintained unless this right of a majority of a collective-

bargaining unit to speak for the unit including the minority is maintained. A bargain on behalf of a collective-bargaining unit amounts to nothing, if after it is made the individuals or some of them comprising that unit are not affected thereby. This principle is explicit in the National Labor Relations Act (29USCA § 151 et seq.), in the Railway Labor Peace Act (45 USCA § 151 et seq.), and in the act now under consideration. If the majority of a collective-bargaining unit can thus coerce the minority in the matter of bargaining, we see no reason why the legislature may not vest in a majority of the unit power to determine whether such conditions obtain in the employment as warrant the calling of a strike in an effort to remedy them. * * *

"In providing for 'industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services' * * *, we see no reason why the legislature may not forbid concerted picketing and boycotting in aid of an unauthorized strike. * * * All these questions relating to rights of employees to organize, conduct strikes, boycotts, and other coercive measures are in the field of public policy. As the court of appeals of New York said in the case already cited (May's Furs & Ready-To-Wear, Inc., v. Bauer (1940), 282 N.Y. 331; 26 N.E. (2d) 279), and as this Court has said many, many times, these questions are for the legislature. Courts do not sit to pass upon the wisdom or unwisdom of the acts of the legislature. * * *

"Both parties to a labor dispute are under the same constitution and both are subject to the valid acts of the legislature. Just where the line should be drawn in an effort to balance the bargaining power of the parties is primarily a matter of public policy, for the legislature and not a question of law for the courts."

While seemingly quite unnecessary, it may be noted that section 19 of the Bonine-Tripp act provides:

"This act shall be deemed an exercise of the police power of the state of Michigan for the protection of the public welfare, safety, prosperity, health and peace of the people;

and all the provisions of this act shall be liberally construed for the accomplishment of said purposes."

In the light of the authorities hereinbefore cited we are of the opinion that, contrary to appellees' contention, the provision of the act under consideration is not "so unreasonable as to deny freedom of speech and due process of law."

In so concluding we are mindful that in a case decided by the Federal district court in Kansas an opposite conclusion was reached. See Stapleton v. Mitchell, 60 Fed. Supp. 51. We also note the decision in Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810; and American Federation of Labor v. Bain, 165 Ore. 183, cited by appellees and relied upon in the opinion of the trial judge. But the statutory provision considered in the Alabama case was materially different than the Michigan statute in the following respect. The vote required to authorize a strike was "the vote of the majority of the regular employees working in the business, plant, or in such unit thereof * * *." In construing this provision, the court said:

"The denial of the right to strike is made to rest, not upon the rule of the majority of any bargaining unit, or in any craft to which the workmen belong, but upon the whim or caprice of others who may be employed in the business, plant, or unit thereof, whoever they may be and whatever views they may entertain as to labor or labor unions."

In the remaining case, American Federation of Labor v. Bain, *supra*, the court held invalid the Oregon statute which prohibited picketing by a minority of the employees of a given employer. The court said: "* * * the controversy has resolved itself largely into the question whether the regulation, or, as the plaintiffs would have it, the prohibition, of picketing and boycotting in Sections 1 and 3, invades the plaintiffs' fundamental rights and liberties of freedom of speech and of assemblage." Obviously the issue in the Oregon case was quite materially different than

that in the instant case, and hence the holding in the Oregon case is not persuasively material to decision herein.

As earlier noted herein the remaining question as restated in appellees' brief is as follows:

"2. In view of the National Labor Management Relations Act and the provisions requiring collective bargaining by representatives in industries affecting commerce, was it within State authority to make a strike unlawful if not approved by a majority of the employees in the collective bargaining unit?"

On this issue the position of appellees is stated in their brief as follows: "The strike election provisions of the Bonine-Tripp Act conflict with the National Labor Management Relations Act."

Admittedly, as applied to interstate commerce, if the Bonine-Tripp Act does conflict with the provisions of the National Labor Management Relations Act, the former is not enforceable; but if there is no conflict the validity and enforceability of the Bonine-Tripp Act is not impaired on this ground. In appellees' brief it is pointed out that as related to collective bargaining the National Labor Management Relations Act contains specific provisions, and it is asserted "it covers the field of the strike in consequence of failure to reach an agreement." And appellees' brief continues:

"It (the Federal act) sets the following conditions precedent to striking: (1) Sixty days notice of contract termination; (2) Offer to negotiate new contract; (3) Notice to Federal and State conciliation boards of existence of a dispute; and (4) continues in full force and effect without resorting to strike or lockout all the terms and conditions of the existing contract for a period of 60 days." See National Labor Management Relations Act (1947), § 8.

We do not discover in the foregoing any provisions which are inconsistent with or in conflict, either expressly or by necessary inference, with the requirement of the Bonine-Tripp act that as precedent to calling a strike there shall be a vote of the employees of the bargaining unit; nor has there otherwise been called to our attention any such in-

consistent or conflicting provisions in the Bonine-Tripp act. The very fact that subdivision 3 of the above quotation requires notice to "State conciliation boards" indicates that the Federal act was not thought to be exclusive of permissible state regulations. Further, it is difficult, if not quite impossible, to read the decision in the Wisconsin case hereinbefore noted without coming to the conclusion that in the exercise of its police power a state may by legislation regulate the exercise of the right of employees to strike, providing such regulations are not in conflict with or inconsistent with Federal regulations.

As stated by Justice Brandeis in Dorchy v. Kansas, 272 U. S. 306; "Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike." That individual states have the right within the valid exercise of police power to regulate the calling of a strike, and that restrictions of that character do not violate the constitutional liberty possessed by employees or union labor organizations, has been adjudicated by highest authority. See Nebbia v. New York, 291 U. S. 502. In Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U. S. 740, 749, it was said:

"Furthermore, this Court has long insisted that an 'intention of Congress to exclude States from exerting their police power must be clearly manifested.' * * * We will not lightly infer that Congress by the mere passage of a Federal Act has impaired the traditional sovereignty of the several States in that regard."

That congress in passing the Labor Management Relations Act of 1947 did not intend thereby to deprive the states of any and all power to limit or qualify the right to strike, is persuasively indicated by section 13 of the Act which reads:

"Nothing in this Act, *except as specifically provided for herein*, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, *or to affect the limitations or qualifications on that right.*"

And in Kelly v. Washington, 302 U. S. 1, 10; 82 L. Ed. 3, 10, the court said:

"The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.' ".

We conclude that in the particular case under consideration the Michigan statute is not in conflict with the National Labor Management Relations (Taft-Hartley) Act.

In considering this case we have not overlooked appellees' contention that enforcement of the statutory provision herein involved would be in conflict with the commerce clause of the United States Constitution, Article I, § 8 (3). The test would be:—Does this statutory provision impose an undue burden upon interstate commerce? We think it does not. This issue was quite fully considered in International Union v. Wisconsin Employment Relations Board, *supra*, and decision therein was adverse to appellees' contention herein. In reaching a like conclusion we are content to rest decision on the holding of the Wisconsin court, incident to which it was said:

"But if the contention of the respondents on the ground now under consideration is upheld, then every order of the board based on violation of unfair labor practices of employees (and we might add every pertinent act of the legislature) may be ignored and there will be nothing left that the board can effectively do, as some products of every manufacturer inevitably reach interstate commerce."

To hold otherwise than in the cited case in practical effect would be to say that in this type of case the commerce clause of the United States Constitution largely, if not wholly, nullifies the inherent rights of states to exercise police power. We are not prepared to so hold. In this connection it may be noted that appellees call attention to the fact that some employees of the Chrysler Corporation who would be classed in the same bargaining unit are employed by the corporation in Indiana and some in Cali-

fornia. Even so, we are of the opinion that this circumstance cannot be held to be a restriction upon the exercise in Michigan of the state's inherent police power incident to a strike which is located in this state. Otherwise diversity of state location of employees would limit the right of any of the states, wherein the employees were located, in the exercise of inherent police power in the particular case with which we are here concerned. We know of no authority sustaining such conclusion and consider it not tenable.

"Under our constitutional system, there necessarily remains to the states, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. *Minnesota Rate Cases*, 230 U. S. 352, 402. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. * * * Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced." Kelly v. Washington, *supra*.

Incident to appellees' challenge of the validity of the statutory provision here involved, we find no merit in their contention that: "It is equally obvious that the statute is not saved by the delegation of authority to a majority of the bargaining unit. The character of the right (to strike) under discussion pertains to each individual." The right of an individual to terminate his employment is expressly preserved to the employee by the portion of section 13a of the Bonine-Tripp act, which reads:

"Nothing in this act shall be construed to require an employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment."

In granting the injunctive relief prayed in the instant case the circuit judge was in error. The decree entered in the circuit court is reversed and a decree dismissing the bill of complaint may be entered in this Court. Since the

constitutionality of the statute and an important question are here involved, no costs are awarded.

Signed WALTER H. NORTH,
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SUPREME COURT OF THE ~~UNITED STATES~~

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., ET AL.,
Appellants,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR APPELLANTS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 456

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Appellants,

vs.

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Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR APPELLANTS

Opinions Below

The opinion of the Circuit Court of Wayne County, Michigan, which is not reported, may be found at pages 66 to 69 of the record. The opinion of the Supreme Court of Michigan is reported in 325 Mich. 250, 38 N. W. (2d) 421 (1949) and may be found at pages 121 to 134 of the record.

Jurisdiction

The judgment of the Supreme Court of Michigan was entered on June 29, 1949 (R. 135). The order of Mr. Chief Justice Vinson allowing this appeal was entered on September 26, 1949 (R. 135-136). The order of this Court noting probable jurisdiction was entered on December 12, 1949 (R. 139). The jurisdiction of this Court is invoked under Section 1257(2) of Title 28, U.S.C.

Statutes Involved

The statute of the State of Michigan which is involved in this appeal is Act No. 318, Public Acts of Michigan, 1947, commonly known as the Bonine-Tripp Act.[1] Sections 9, 9a, 9b, 9c and 22 of this Act, which are particularly relevant to this appeal, are set forth in full in Appendix A to this brief. For the convenience of the Court a summary of these sections is presented here.

Section 9 of the Michigan statute provides that "no strike or lockout shall take place or be put into effect" until specified "steps" and "requirements" are complied with:

(a) If the parties cannot settle their dispute, "the employees or their representative, in the case of impending strike" must notify the State Mediation Board of the issues involved "not less than ten days before the strike . . . is to become effective . . ." Section 9(1). Mediation is then to proceed. Section 9(2).

(b) If it becomes apparent to the State Mediation Board, or if the Board is notified by either party that "further efforts to settle such dispute by mediation would be without avail," the Board is to conduct an election within 10 days,

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[1] Act No. 176, Public Acts 1939, as amended; Michigan Statutes Annotated, 1947, Cum. Supp., §§ 17.454(1) *et seq.* The Michigan statute under review was approved July 1, 1947, effective October 11, 1947.

or, if this is not practical, within 20 days. The expenses of such election are to be defrayed by the parties to the dispute. Section 9a.

(c) "Every employee in the bargaining unit"—the State Mediation Board is required by Section 9e to "determine" the "bargaining unit"—"shall be entitled to vote in such election and in order to authorize a strike under the provisions of this statute, a majority of all employees in such bargaining unit must vote [by secret ballot] in favor of such action." Section 9a.[2]

(d) Section 9b provides that "it shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by Section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a."

Section 22 makes violations of the act criminal offenses. It provides that "any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect . . . without first having served notice as required in section 9 of this act . . . or while an election is pending under said section 9

[2] The provisions with respect to the expenses of the election, and the composition of the majority who must approve the strike were changed by amendments to the Michigan Act in 1949 (Act No. 230, Public Acts of 1949, approved May 31, 1949). The State now bears the expenses of the election. A "majority of all employees casting valid ballots", rather than a majority of the bargaining unit, must vote in favor of strike action. However, under Michigan law the change in the statute does not release plaintiffs from liability for the penalties incurred by their action under the earlier statute. The earlier statute is "treated as still remaining in force" for the purpose of prosecution for any violations committed while it was in effect. Mich. Stats. Ann., Ch. 5, Sec. 2.214.

. . ." shall be punished by fine up to $1,000.00 or imprisoned for not more than six months, or by both.

The relevant sections of the Labor-Management Relations Act, 1947 (61 Stat. 136; 29 U. S. C. §§ 141-197) are set forth in Appendix B.

Questions Presented

1. Whether the provisions of the Michigan statute prohibiting the calling of a strike for higher wages in an industry affecting commerce unless and until a majority of all employees in the collective bargaining unit as designated by the State Mediation Board have so voted in a state-conducted election invades the field which Congress has occupied by the Labor-Management Relations Act, 1947.

2. Whether these provisions of the Michigan statute conflict with the provisions of the Labor-Management Relations Act, 1947.

3. Whether these and other provisions of the Michigan statute constitute unlawful restraints upon basic personal rights in violation of the due process clause of the Fourteenth Amendment.

Statement

The amended complaint (R. 39-46) was filed in the Circuit Court of Wayne County, Michigan, on May 29, 1948, by the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O. (hereinafter referred to as the UAW-CIO), the Acting President of the UAW-CIO in his own behalf and in behalf of 1776 members of the Union employed by the Chrysler Corporation, and certain other officers and members of the UAW-CIO. The defendants were James N. McNally, the Wayne

County Prosecuting Attorney, and Eugene F. Black, the Michigan Attorney General.[3]

The complaint alleges that the Chrysler Corporation operates 10 plants in Michigan, 3 in Indiana and 1 in California (R. 39, 42); that the UAW-CIO, which has been certified by the National Labor Relations Board as the collective bargaining representative of all production and maintenance employees in the 14 Chrysler plants, has entered into a collective bargaining contract with the company on behalf of all these employees (R. 42); that a wage dispute arose between the plaintiffs and the corporation (R. 41); that the UAW-CIO, having fully complied with the notice, bargaining and mediation requirements of Section 8(d) of the Labor-Management Relations Act, 1947, decided to strike in support of its wage demands (R. 42-43); that the State Mediation Board demanded that the plaintiffs and members of the Union who were employees of the Chrysler Corporation submit to an election (R. 41); that a strike was called "while said election was pending within the meaning" of the Act (R. 41-42); and that defendants threatened to prosecute all persons instigating or causing a strike prior to authorization by an election (R. 43).

The complaint further alleges that sections 9, 9a and 9b, as threatened to be applied to the plaintiffs, are unconstitutional and void as in conflict with the Labor-Management Relations Act, 1947, and the due process clause of the

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[3] In January, 1949, in consequence of the 1948 elections, Gerald K. O'Brien succeeded James N. McNally as Prosecuting Attorney of Wayne County, and Stephen J. Roth succeeded Eugene F. Black as Attorney General of Michigan. This succession occurred prior to the consideration of the cause by the Supreme Court of Michigan, which rendered its decision June 29, 1949. A formal order of substitution was entered by the Michigan Supreme Court on September 21, 1949.

Fourteenth Amendment (R. 43-44).[4] Plaintiffs asked that the strike vote requirements of sections 9, 9a, and 9b be determined to be invalid and, to prevent irreparable injury, prayed for an injunction to enjoin prosecution (R. 45).

A motion to dismiss (R. 48-49) for lack of jurisdiction was denied by the Circuit Court (R. 50-51). A temporary injunction was granted restraining and enjoining defendants "from instituting and proceeding further in any prosecution involving alleged violations of the election requirements . . ." (R. 52).

The defendant Prosecuting Attorney admitted in his answer that "he will prosecute all persons who in said county violate the penal provisions of Act No. 318 of the Michigan Public Acts, 1947" (R. 60). Likewise the defendant Attorney General admitted that he and the Prosecuting Attorney "have threatened to enforce the penal provisions of the statutes and laws of this State against violators of said statutes and laws" (R. 57) and that "if said plaintiffs or others violate the laws of the State of Michigan they will be subjected to prosecution" (R. 58). Both defendants denied the allegations as to unconstitutionality (R. 57, 60).

The case was tried to the Circuit Court without a jury on July 15, 1948 (R. 2-39). Evidence was presented that the UAW-CIO was the recognized bargaining representative of all the employees of the Chrysler Corporation (R. 13-14); that the collective bargaining unit certified by the National Labor Relations Board and the collective bargaining agreement between the UAW-CIO and the corporation covered 4 plants in Indiana and California as well as 10 in Michigan (R. 14; 85-86); that the company's activities

[4] Various allegations under the Michigan Constitution need not be repeated here since they have been finally determined against plaintiffs by the Supreme Court of Michigan.

affected interstate commerce (R. 14); and that plaintiffs had complied with the notice, bargaining and mediation requirements of Section 8(d) of the Labor-Management Relations Act, 1947 (R. 9, 21).

The Acting President of the UAW-CIO testified that "the fundamental object of the Chrysler strike is to reach a satisfactory wage agreement with the Chrysler Corporation for our membership. We were unable to reach this agreement in peaceful collective bargaining sessions, and therefore we had to call a strike in order to force what we considered justified demands" (R. 13). The Acting President of the UAW-CIO further testified that there had been compliance with the requirements of the UAW-CIO Constitution in calling the strike (R. 11-12) as well as with the requirements of federal law (R. 21). On May 11, 1948, the day before the strike, the UAW-CIO received the following telegram from the State Mediation Board:

> "You are hereby advised that any work stoppage at Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended."
>
> Signed "Philip Weiss, Chairman Labor Mediation Board" (R. 10).

The UAW-CIO "ignored the request" and "informed Mr. Weiss that we would not agree to the election" (R. 11). The strike commenced the next morning (R. 15).

On August 3, 1938 Circuit Judge Theodore J. Richter filed his opinion (R. 66), and on August 11, 1948, the decree for plaintiffs was entered (R. 71). The circuit judge held that (1) the limitations imposed by the Michigan statute upon the right to strike were unconstitutional invasions of basic rights protected by the due process clauses of the State and Federal Constitutions (R. 67-68); and (2) the collective bargaining rights and procedures of the Federal

Labor-Management Relations Act were impaired by the state act (R. 69). The court stated:

> "The exercise of collective bargaining rights is controlled by the federal law, and this control cannot be impaired or modified by the states. Under existing conditions it is impossible to dissociate the strike from the process of collective bargaining" (R. 69).

The court, therefore, permanently enjoined the prosecution of the plaintiffs for violating the election requirements of the state act (R. 70-71).

Defendants appealed. The Supreme Court of Michigan on June 29, 1949, reversed and dismissed the bill of complaint (R. 121-134). The Michigan Supreme Court found that "the calling and putting into effect of this strike was obviously in violation of the terms of the statute . . . and rendered plaintiffs subject to threatened criminal prosecution, providing the statute is valid" (R. 122). The court, thereupon, went ahead to consider all questions raised under the Federal Constitution and laws and decided them adversely to the plaintiffs. The court, relying heavily on *International Union, U. A. W. A., A. F. of L., Local 232* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, held that it was not "an unreasonable exercise of the state's police power to forbid resort to a strike which is not approved by a majority of the employees involved . . ." (R. 127); and that there was no conflict between the provisions of the Michigan Act and the Labor-Management Relations Act, 1947, and no conflict with the Commerce Clause (R. 132). The court recognized that the strike involved plants in Indiana and California and that "some employees of the Chrysler Corporation who would be classed in the same bargaining unit are employed by the corporation in Indiana and some in

California," but it held that these facts could not affect the police power of Michigan "incident to a strike which is located in this state" (R. 133).

Specification of Errors to Be Urged

The court below erred:

(1) In holding that the provisions of the Michigan statute prohibiting the calling of a strike for higher wages in an industry affecting commerce unless and until a majority of all employees in the collective bargaining unit as designated by the State Mediation Board have so voted in a state-conducted election, did not invade the field which Congress has occupied by the Labor-Management Relations Act, 1947.

(2) In holding that these provisions of the Michigan statute did not conflict with the provisions of the Labor-Management Relations Act, 1947.

(3) In holding that these and other provisions of the Michigan statute did not constitute unlawful restraints upon basic personal rights in violation of the due process clause of the Fourteenth Amendment.

Summary of Argument

I

The Michigan statute invades the field of governmental regulation of strikes in industries affecting commerce, a field which Congress occupied in the Labor-Management Relations Act. Congress evidenced its intention to occupy this field by enacting detailed specific provisions regulating strikes in industries affecting commerce and by rejecting a strike vote requirement substantially identical to that contained in the Michigan statute under review.

A

From a myriad of proposals for dealing with strikes in industries affecting commerce, Congress selected for enactment the regulations it deemed appropriate for strikes in industries affecting commerce. Congress carefully listed as unfair labor practices certain types of strikes (Section 8(b)(4)), and made labor organizations liable for damages resulting from such proscribed strikes. Section 303. Congress provided that no strike to terminate or modify a collective agreement is permissible in the absence of a 60-day notice to the other party, 30-day notices to federal and state mediation agencies and bona fide negotiations in the intervening period. Section 8(d). Congress made special provision for strikes in "national emergencies" and provided for a secret ballot of employees to determine whether they wish to accept the final offer of the employer for settlement of the dispute. Sections 209-210. Even in the case of a threatened national emergency, however, Congress was unwilling to prohibit a strike which failed to receive the approval of a majority of the employees in a government poll. Once the vote was taken and regardless of its outcome, the employees were free to exercise their own judgment as to the desirability of putting the strike into effect.

This detailed action by Congress in the field of governmental regulation of strikes in industries affecting commerce constitutes a clear occupation of that field. *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, No. 419, October Term, 1949, decided February 13, 1950; *LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767; *Hill v. Florida*, 325 U. S. 538.

B

The Hartley bill as it passed the House contained a binding strike vote provision substantially identical to that contained in the Michigan statute under review. The Senate version of the Taft-Hartley Act did not contain any such provision, although proposals for a binding strike vote had been presented to the Senate Committee. The Senate prevailed and the Taft-Hartley Act became law with only the strike provisions described in A above.

Congressional rejection of a binding strike vote provision can only be attributed to a belief that the provision would not accomplish the desired ends. There is nowhere in the legislative history the slightest intimation that the strike vote mechanism might be more effective on a state than on a national basis. On the contrary, a strike vote on a national basis could at least be taken among the employees of the entire bargaining unit instead, as in this case, among only a part of that bargaining unit. To say now that Congress left it to the states to pass the very provision which it expressly rejected would be to negate clear Congressional intent evidenced by compelling legislative history.

C

The *International Union* case did not, as the Michigan Supreme Court seemed to think, determine the question here presented. This Court in the *International Union* case considered the "unannounced stoppage of work to win unstated ends" not to be a strike. The Court, therefore, did not examine into the extent that the Labor-Management Relations Act, 1947 preempts the field in the case of strike action in industries affecting commerce or the express rejection by Congress of a strike vote requirement substantially identical to the one under review.

II

The Michigan statute clashes with the National Act at its very roots. Congress has clothed the chosen bargaining representative of the employees with the sole authority to bargain with the employer on their behalf. The State of Michigan cannot, by a strike vote requirement or otherwise, nullify this Congressionally-conferred authority of the chosen representative of the employees to act on their behalf and reject the employer's last offer. This conflict comes into even closer focus as the operation of the two statutes is examined.

A

The UAW-CIO represents in a single bargaining unit all the production and maintenance employees of the Chrysler Corporation employed not only in the State of Michigan but in the States of Indiana and California as well. The State of Michigan sought to apply a bargaining unit different from the bargaining unit which the duly qualified representative under the National Act was in fact representing in its negotiations with the Chrysler Corporation. This Court has held that the states cannot fix collective bargaining units in industries affecting commerce in situations where the conflict was far less real than in the case at bar. *LaCrosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767.

B

Under Section 8(d) of the National Act a party to a collective bargaining agreement desiring to terminate or modify that agreement must notify the other party 60 days in advance, must notify the federal and state conciliation agencies 30 days in advance and must continue in effect

without strike or lockout the terms of the existing agreement for 60 days or until the contract expires. The UAW-CIO complied with each of these requirements; it thus had the right under the National Act to take action to back up its collective bargaining demands. The additional delays and time-consuming procedures which the Michigan statute sought to impose upon the collective bargaining representative of the employees conflicts with the carefully devised procedures of the National Act.

C

Sections 7 and 13 of the National Act guarantee the right to strike peacefully and for lawful ends. The legislative history of both the Wagner Act and the Taft-Hartley Act evidence the Congressional intent to guarantee this right.

This Court has held that a state cannot place additional qualifications upon the right of employees to choose their collective bargaining representatives. *Hill v. Florida*, 325 U. S. 538. No more can a state place additional qualifications upon the right of employees to engage in strike action.

III

The Michigan statute violates the due process clause of the Fourteenth Amendment. The right of workers to strike peacefully and for lawful purposes is a fundamental one, like their rights to speak and to assemble. State action placing restraints upon the exercise of those rights must, if it is to be valid, be narrowly drawn to meet important public interests entitled to such protection.

The Michigan statute fails to meet these tests. The Michigan law applies to all strikes in all industries; it applies regardless of the purpose or merits of the strike or the damage to the interests of the employees by compelling them to work on terms dictated by the employer. The stat-

ute requires that the majority of the entire bargaining unit as determined by the State Board must vote approval before strike action is permitted. Thus, the rights of employees who desire to strike and who vote their approval can be defeated by those persons in the bargaining unit who are unable to cast their ballots because of illness, absence or otherwise, or who neglect or are unwilling to vote. Furthermore, the Michigan statute makes the quitting of work itself a crime just as it does the speech or assembly which instigate or cause employees to quit work in concert.

While this Court has never dealt with the precise question at hand, similar restraints upon the right to strike and its incidents have been held invalid by a statutory federal district court and by the highest courts of two states. *Stapleton* v. *Mitchell*, 60 F. Supp. 51 (D. Kans., 1945); *Alabama Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810 (1944); *American Federation* v. *Bain et al.*, 165 Ore. 183, 106 P. (2d) 544 (1940).

ARGUMENT

I

The Michigan Statute Invades a Field Which Congress Has Occupied

It is appellants' belief that in the National Act Congress occupied a field far greater than the governmental regulation of strikes in industries affecting commerce. The broad purposes of the National Act (Section 1(b)), its legislative history and its detailed operating provisions lead us to the conclusion that Congress was enacting a broad and exclusive labor code governing labor-management relations in industries affecting commerce. We believe that, except

where Congress specifically so provided,[5] this labor code leaves to the states only its "usual police powers" (*People of State of California* v. *Zook*, 336 U. S. 725, 734) such as the curbing of "mass picketing, threats, violence . . ." (*Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740) and of "coercive tactics" (*International Union, U.A.W.A., A. F. of L., Local 232* v. *Wisconsin Employment Relations Board*, 336 U. S. 245).

It is not necessary, however, for appellants to sustain the broad proposition enunciated in the previous paragraph. The Michigan statute is a general regulation of strikes in industries affecting commerce. If, as appellants contend and will demonstrate, Congress occupied the field of governmental regulation of strikes in industries affecting commerce, the Michigan statute cannot stand (*Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605), whether or not appellants are correct in their belief that the National Act is a labor code which excludes state action in the broader field of labor-management relations.

Congress evidenced its intention to occupy the field of governmental regulation of strikes in industries affecting

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[5] Where Congress intended that any phases of labor-management relations were to be left to state control it specifically so provided. Section 14(b) expressly reserves to the states the power to prohibit closed or union shop agreements. See *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board*, 336 U.S. 301. Congress also specifically left with the states the power to use their mediation and conciliation services to help the federal conciliation agencies in labor disputes affecting commerce. Sections 202(c), 203(b) and 8(d)(3). In like vein section 10(a) of the original National Labor Relations Act was amended to permit the National Board to cede jurisdiction in a limited area of industry which is "predominantly local in character", but only where there was no conflict between the applicable state and federal law. This Court adverted to section 10(a) in *People of State of California* v. *Zook*, 336 U.S. 725, 732, stating that "when state enforcement mechanisms so helpful to federal officials are to be excluded, Congress may say so, as in the Taft-Hartley Act, 29 U.S.C. (Supp.) § 160(a), 29 U.S.C.A. § 160(a)."

commerce in at least two ways: First, by the specific provisions it enacted; second, by the specific provisions which it expressly refrained from enacting. We will deal with these two points in order.

A

Congress enacted specific provisions dealing with strikes in industries affecting commerce:

In considering the Taft-Hartley Act, Congress had before it a wide range of proposals for the regulation of strikes in industries affecting commerce, including a proposal substantially identical to that contained in the Michigan statute under review. See Point B, *infra*, pp. 20 to 26. Proposals for every conceivable type of regulation of strike action were made to both the House and Senate Committees considering the Taft-Hartley Act.[6] The Senate Committee

[6] See, for example, testimony of the following persons before the Senate Committee: Theodore Iserman, Esq. (Hearings before the Committee on Labor and Public Welfare, U. S. Senate, 80th Cong., 1st Sess., on S. 55 and S. J. Res. 22, pp. 133, 134: Deprive those striking over issues that NLRB can handle of protection of NLRA, Clayton Act, and Norris-LaGuardia Act); Ludwig Teller, Esq. (id. at 248: Outlaw strikes for purpose of stifling production); B. E. Hutchinson, Vice-President, Chrysler Corp. (id. at 361: Outlaw industry-wide strikes); Louis Waldman, Esq. (id. at 412: Outlaw strikes during period of contract); Governor Harold Stassen (id. at 562: governmentally-supervised strike vote); Almon Roth, National Federation of American Shipping (id. at 634: Outlaw sympathy and recognition strikes); Charles Kuzzell, American Mining Congress (id. at 674: Strike vote—majority of employees affected must favor strike); Congressman Francis Case (id. at 730: 60-day cooling-off period); T. G. Graham, Vice-President, B. F. Goodrich Co. (id. at 887: 60-day cooling-off period followed by strike vote); and Ira Mosher, National Association of Manufacturers (id. at 950: strike vote with majority of eligible employees voting in favor of strike). See also the following testimony before the House Committee: H. L. Bills, Acme Steel Co. (Hearings before the Committee on Education and Labor, House of Representatives, 80th Cong., 1st Sess. on Bills to Amend and Repeal the National Labor Relations Act, p. 1095: Outlaw strikes for objectives contrary to NLRA); Edward O'Neal, American Farm Bureau Federation (id. at 1799: Cooling-off period; compulsory arbitration in

stated that "in dealing with the problem of the direct settlement of labor disputes the committee has considered a great variety of proposals ranging from compulsory arbitration, the establishment of fact-finding boards, creation of an over-all mediation tribunal, and the imposition of specific waiting periods." Senate Report No. 105 on S. 1126, p. 13. After consideration of all the varying proposals, the Senate Committee decided in favor of less drastic regulations, stating that "it is our conclusion that by modifying some of the practices under the Wagner Act which tend to destroy the balance of power in collective bargaining negotiations by restraining one party to a dispute without restraining the other, Congress would go a long way toward making collective bargaining the most effective method of solving the industrial relations difficulties." Senate Report No. 105 on S. 1126, p. 14. With this in view, the Senate Committee proposed and Congress finally enacted the following regulatory provisions insofar as strikes in industries affecting commerce are concerned:

(1) Congress carefully listed certain types of strikes and made them unfair labor practices. Under Section 8(b)(4) of the National Act it is an unfair labor practice for a union or its agents to engage in or encourage any strike for any one of the following objects:

> (a) To require an employer or self-employed person to join a union or an employer organization or to force an employer or any other person to cease dealing in the products of another employer. Section 8(b)(4)(A).

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disputes depriving public of food, fuel, etc.); Eric Johnston, Committee for Economic Development (id. at 2289: 10 days compulsory mediation followed by strike vote—majority of union members voting must favor strike); Congressman James Auchincloss (id. at 2910: compulsory arbitration); and Allen Rucker, Tool Owners Union (id. at 3201: strike vote—majority of employees affected must favor strike).

(b) To force or require any other employer to recognize or bargain with an uncertified union. Section 8(b)(4)(B).

(c) To force or require an employer to recognize or bargain with one labor organization if another union is the certified bargaining agent. Section 8(b)(4)(C).

(d) To force or require an employer to assign particular work to employees in one union or in one trade, craft or class, rather than to employees in another union or another trade, craft or class. Section 8(b)(4)(D).

In addition to making these actions unfair labor practices, Congress made labor organizations liable for damages resulting from strikes in the forbidden categories (Section 303) as well as providing for injunctive relief (Sections 10(j)-(l)).

(2) Congress not only listed the strikes which would be unlawful, but it also imposed procedural requirements conditioning the legality of strikes in industries affecting commerce. Under Section 8(d) no strike to terminate or modify a collective agreement is permissible in the absence of a sixty-day notice to the other party, thirty-day notices to federal and state mediation agencies, and bona fide negotiations in the intervening period. In addition to making the failure to follow these procedural steps unfair labor practices (Section 8(b)(3)), striking employees in such circumstances lose status as employees and the right to reinstatement. Section 8(d).

(3) Congress made special provision for strikes in "national emergencies". Sections 206-210. In the event such strikes are threatened, the National Labor Relations Board is directed to take a secret ballot of employees to determine whether they wish to accept the final offer of the employer for settlement of the dispute. Although the results

of such elections are certified to the Attorney General, no majority vote is required to make lawful a strike which results thereafter.

The national emergency provisions of the Taft-Hartley Act evidence the same Congressional antipathy to a binding strike vote that is demonstrated by the rejection of the House proposal for such a vote. See *infra*, pp. 20 to 26. Even in the case of a threatened national emergency, Congress was unwilling to prohibit a strike which failed to receive the approval of a majority of the employees in a government poll. All that Congress was willing to legislate even in dealing with national emergency strikes was a provision that there must be a vote; once the vote was taken and regardless of its outcome, the employees were free to exercise their own judgment as to the desirability of putting the strike into effect. It was the "force of public opinion", rather than any binding effect of the strike vote, upon which Congress was relying. See Senate Report No. 105 on S. 1126, p. 15.

It is difficult to interpret this detailed action by Congress in the field of governmental regulation of strikes in industries affecting commerce as anything except an occupation of that field. After considering a myriad of proposals for dealing with strikes in industries affecting commerce, Congress outlawed various types of strikes; it provided a carefully devised procedure for notices, mediation and bona fide negotiation prior to striking; it made special provision for national emergency strikes. These provisions of the National Act governing strike action in industries affecting commerce must be regarded under the decisions of this Court as a plain indication that the federal government has occupied the field and the state may not, therefore, impose additional restrictions upon strikes affecting commerce. *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, No. 419, October Term,

1949, decided February 13, 1950; *LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767; *Hill v. Florida*, 325 U. S. 538. Had Congress intended for the states to impose restrictions in this field in addition to its own detailed regulations, it is reasonable to assume that it would have specifically so stated just as it did in allowing the states to add restrictions upon "compulsory unionism" in addition to its own regulations. Section 14(b).[7]

It is respectfully submitted that no additional evidence of Congressional intent to occupy the field is required over and above the provisions which Congress itself enacted for the regulation and prevention of strikes in industries affecting commerce. But if any such additional evidence should be necessary, it is provided by the action of Congress in rejecting a specific proposal for the very type of limitation upon strikes that the State of Michigan seeks to impose.

B

Congress expressly rejected the strike vote provision which Michigan has enacted.

The original Hartley bill (H. R. 3020, 80th Cong., 1st Sess.), as reported by the House Committee, provided that a "strike may not be authorized or conducted unless in such secret ballot a majority of the employees in the bargaining unit concerned vote to reject the employer's last offer of settlement, and to strike". Section 2(11)(B)(vi)(h); see also Section 8(c)(8). In its report to the House accompanying the bill, the Committee called attention to the fact that the American workingman "has frequently against his will been called out on strikes which have resulted in wage losses representing years of his savings" (House Re-

[7] See also footnote 5, *supra*, p. 15.

port No. 245 on H. R. 3020, p. 4,) and stated its belief "that at least the more irresponsible strikes, those called without due consideration, those concerning small issues, and those that leaders call without consulting their constitutents, will be greatly reduced by requiring strike votes after each side has had an opportunity to state its position and to urge its fairness upon those called upon to do the striking" (House Report No. 245 on H. R. 3020, p. 22).

Six members of the House Labor Committee filed a minority report which took strong exception to the strike vote provisions. The minority stated:

> "Section 2(11)(B)(vi) states the requirements which must be met before a strike or lock-out is called and, in essence, requires the holding of a strike vote in which employees have an opportunity to accept or reject the employer's last offer. The effect of these provisions is to revive the unfortunate experience of the Smith-Connally Act and to interject the Federal Government still further into the bargaining process" (House Minority Report No. 245 on H. R. 3020, p. 70).

The strike vote provisions were also attacked on the floor of the House. Congressman Lane, for example, complained about the one-sided character of the bill, since "no provision is made for a ballot among stockholders to determine whether the union's last offer of settlement is satisfactory." 93 Cong. Rec. 3445 (1947). Congressman Klein supported Congressman Lane, stating that these provisions "constitute an intolerable regimentation of American labor." 93 Cong. Rec. 3448 (1947).

The Hartley bill (H.R. 3020), as it passed the House, contained the strike vote provision supported by the majority of the Committee and opposed by the minority. See Sections 2(11)(B)(vi)(h) and 8(e)(8). These provisions were substantially identical to the strike vote provisions of the Michigan statute under review here. A

government-conducted election was required prior to strike action. All the members of the bargaining unit, whether they belonged to the Union or not, were to have the right to vote in the election. No strike could be called unless a majority of the entire bargaining unit voted for that action.

The Senate, too, considered proposals for a binding strike vote. The question arose several times at the hearings before the Senate Committee on Labor and Public Welfare.[5] Perhaps the most dramatic incident of the lengthy Senate hearings preparatory to the Taft-Hartley Act was the testimony of Mr. Harold E. Stassen, former Governor of Minnesota, directed at this very question. Governor Stassen proposed the following provision to the Senate Committee:

> "If settlement has not been reached, the last offer of management arrived at to be presented for secret ballot vote as to acceptance or strike, the strike vote being at the end of negotiations rather than at the beginning. I consider a secret ballot to be the very core of improved procedure for peaceful settlement of industrial disputes" (Hearings before the Committee on Labor and Public Welfare, United States Senate, 80th Cong., 1st Sess., on S. 55 and S. J. Res. 22, p. 562).

Governor Stassen, under questioning by Senator Ball, conceded that the "final secret ballot" on the strike was the "key" to his entire proposal (Hearings, p. 577).

Neither Chairman Taft nor Senator Ball, who jointly piloted the Taft bill through the Senate, took kindly to Governor Stassen's proposal. Chairman Taft and Governor Stassen argued vigorously on this point:

[5] See, for example, testimony of Governor Stassen (Senate Hearings, p. 562), Charles Kuzzell (id. at 671), T. G. Graham (id. at 887), and Ira Mosher (id. at 950).

"The Chairman. Yes, I know, but I have no confidence. Frankly, I don't mind putting it to a labor vote, but I have no confidence that the men will take any different position from the leaders in 99 cases out of 100. I think it is all right to try it but as a solution of the labor problem I think it is just trivial. I think it is trivial as far as being a final solution of the problem. I think he ought to have the right to vote, but I don't think it is going to solve the strike problem. I think the men are more radical than their leaders in most cases.

"Mr. Stassen. I definitely disagree with you, Senator, and my experience for 8 years in Minnesota has been just to the contrary. . . .

"The Chairman. May I call your attention to the fact that the vote provision of the Smith-Connally Act did more to discredit the Smith-Connally Act than any other provision. It was a complete failure.

"Mr. Stassen. I agree with you.

"The Chairman. It may not have been done quite the right way, but every vote was for striking.

"Mr. Stassen. Why, Senator? Because the strike vote was the beginning of negotiations rather than the end.

"In other words, take the steel strike. You had the vote on the steel strike before there was a single offer on the matter of wages. . . .

"Now, then, at the end of the steel negotiations, what was the key question? It was 15 cents an hour and $4 a ton in steel, or strike. At that point, the workers in steel had no chance to pass upon that issue. The decision was made by a few men. They went out on strike, and they wound up with 18½ cents and $5.

"The Chairman. And, I have no doubt, if they had voted, they would have voted to strike as they did at first". (Hearings, pp. 574-575).

Senator Ball followed up Chairman Taft's questioning:

"Senator Ball. You put your whole faith in the final secret ballot on the strike?

"Mr. Stassen. No; I put my faith in all 10 proposals I advance.

"Senator Ball. Yes; but that is the key to it? You think that——

"Mr. Stassen. That, and increased information to them, of course, opening up the avenues of information from the employer to the employee.

"Senator Ball. Do you think, then, if Lewis and the coal operators could not get together, and he said, 'No contract, no work,' which is his way of saying it, there is much chance that the majority of the miners would not support Lewis?" (Hearings, p. 577-578).

The Senate Committee rejected the proposals for a strike vote. Instead, it limited the provision for a ballot to national emergency strikes, and even there to an advisory vote not binding on the bargaining representative (Senate Report No. 105 on S. 1126, 14-15).[9] S. 1126 as it passed the Senate and went to conference contained only the strike provisions now in the Taft-Hartley Act (see pp. 16 to 19, *supra*).

The House Conferees accepted the Senate's omission of the provision for the strike vote (House Conference Report No. 510 on H.R. 3020, p. 34-35). Indeed, the Taft-Hartley Act as it finally emerged from conference contained substantially the provisions relating to governmental regulation of strikes which had been adopted by the Senate Committee after considering all the various possibilities proposed during the hearings.

The legislative history of the National Act, therefore, shows that Congress gave detailed and careful considera-

[9] Apparently neither the Senate Committee nor the Senate itself took a formal vote on the House provision. It will be remembered in this connection that the Senate and the House considered entirely different bills and then sent them to conference together. There was never any formal consideration by either the Senate Committee or the Senate itself of H. R. 3020 as it passed the House.

tion to strike vote provisions of the very kind contained in the Michigan statute under review. Cf. *Carey* v. *Donohue*, 240 U. S. 430, 436-437; *United States* v. *Pfitsch*, 256 U. S. 547, 550-552, *United States* v. *Great Northern Ry. Co.*, 287 U. S. 144, 154-155; *Norwegian Nitrogen Prod. Co.* v. *United States*, 288 U. S. 294, 306. Congressional rejection of these provisions can only be attributed to a belief that the provisions would not accomplish the desired ends.[10] There is nowhere in the legislative history the slightest intimation that the strike vote mechanism might be more effective on a state than a national basis.[11] Indeed, it seems perfectly clear that the strike vote provision would have a far greater chance of success on a national than on a state basis. At least on a national basis the strike vote could be taken among the employees of the entire bargaining unit dealing with the employer. Where the state seeks to conduct a strike vote, it can poll only the employees within the state, even though, as in this case, the bargaining unit consists of employees both within and without the state. See pp. 28 to 31, *infra*. If Michigan can require a strike vote because of the Chrysler plants in Michigan, then Indiana and California can apply different provisions to the employees of the Chrysler plants within their borders. Thus, individual states will be in the position of affecting and even negating the labor relations policies of their sister states. This is clearly a case where uniformity of regulation is essential. *Pennsylvania R. Co.* v. *Public Service Commission*, 250 U. S. 566, 569.

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[10] Moreover, Senator Taft's remarks during the debates, set forth below, pp. 35-36, indicate that he had doubts as to legislative power to "modify" the "right to strike" except "in cases which do not involve the basic question of wages, prices and working conditions."

[11] In fact, the House Committee considered the possibility that under the Hartley Act provisions local agencies might be utilized by the federal authorities for conducting the elections if the latter so desired (House Report No. 245 on H. R. 3020, p. 22).

Congress, after full consideration of the arguments of both proponents and opponents, rejected the strike vote provisions which Michigan seeks to impose. Under certain circumstances, such as threatened national emergency strikes, Congress apparently believed that a strike vote might help to bring the force of public opinion to bear upon the parties. But that was all. To say now that Congress left it to the states to pass the very provision which it expressly rejected would be to negate clear Congressional intent evidenced by compelling legislative history. The only conclusion that can be drawn is that more generally drawn by the House Committee that "by the Labor Act Congress preempts the field that the Act covered insofar as commerce within the meaning of the Act is concerned" (House Report No. 245 on H.R. 3020, p. 44).

C

The International Union case does not support the decision below.

The *International Union* case did not, as the Michigan Supreme Court seemed to think, determine the question here presented. This Court in the *International Union* case considered the "unannounced stoppage of work to win unstated ends" not to be a strike,[12] but rather a form of illegal activity similar to the kind of concerted activities held un-

[12] "To call these stoppages a strike we would have to ignore petitioners' own conception of this activity. As we have shown, they adopted this technique precisely because it was believed to be 'better . . . than a strike.'" *International Union U.A.W.A., A.F. of L., Local 232 et. al.* v. *Wisconsin Employment Relations Board, et al.*, 336 U. S. 245, 264, ftn. 17.

In fact, the order of the Wisconsin Board under review expressly excepted from the action restrained the "leaving [of] the premises in an orderly manner for the purpose of going on strike." 336 U. S. at 250.

Furthermore, as this Court pointed out, "there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the state's power to police coercion by those methods." 336 U. S. at 253.

protected in such cases as *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240, and *Southern S. S. Co. v. National Labor Relations Board*, 316 U. S. 31. This Court affirmed the power of the State of Wisconsin over "coercive conduct" involving tactics in a work stoppage concerning which it found the National Act silent and the National Board powerless to deal "in any manner". Since the Court was not dealing with a strike in the *International Union* case, it did not examine into the extent that the Labor-Management Relations Act, 1947 preempts the field in the case of strike action in industries affecting commerce, or the express rejection by Congress of a strike vote requirement as related above.

II

The Michigan Statute Conflicts With the National Act

The Michigan statute clashes with the National Act at its very roots. The basic purpose of the Taft-Hartley Act, like that of its predecessor, the Wagner Act, is the encouragement of collective bargaining. Section 1(b); Section 1 of Title 1. This basic purpose finds expression in Section 7 of the Taft-Hartley Act, which, like the same section of the Wagner Act, accords to employees the right to organize and "bargain collectively through representatives of their own choosing." The National Act sets up procedures for determining the representatives of the employees' choosing and requires that the employer deal with these representatives and no others so long as they remain the representatives in good standing. *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332.

Congress has clothed the chosen representatives of the employees with the sole authority to bargain with the employer on their behalf. The employer cannot question their authority to bargain for the employees except by pursuing

the procedures set up in the National Act itself. Section 9. By requiring a strike vote on the employer's last offer, the State of Michigan is in effect assuming the power to nullify the Congressionally-conferred authority of the chosen representatives of the employees to act on behalf of the employees and reject the employer's last offer. The State of Michigan is thus interfering with collective bargaining through representatives chosen by the employees just as much as if it adopted additional qualifications for those representatives not prescribed by Congress. *Hill* v. *Florida*, 325 U. S. 538. As long as the collective bargaining representative—here the UAW-CIO—is authorized and acting under the National Act on behalf of the employees, any action by the State of Michigan, questioning the authority of the representative to act on their behalf conflicts with the National Act.

This conflict comes into even clearer focus as the operation of the two statutes is examined. At at least three vital points, the operation of the Michigan law clashes with the operation of the National Act. First, the bargaining unit under the State Act is different from the bargaining unit under the National Act. Second, the State Act requires delays in the collective bargaining process in conflict with the National Act. Third, the State Act conflicts with the right to strike protected by the National Act.

A.

The Bargaining Unit Under the Michigan Statute is Different from that Under the National Act.

The UAW-CIO represents in a single bargaining unit all the production and maintenance employees of the Chrysler Corporation employed in plants located not only in the State of Michigan but in the States of Indiana and California as well. The UAW-CIO has been certified by the National Labor Relations Board as the collective bargaining repre-

sentative of Chrysler employees in 14 plants in these 3 states. *Matter of Chrysler Corp.*, 42 N. L. R. B. 1145. See also R. 85. In carrying out its responsibility as the collective bargaining representative of these employees, the UAW-CIO entered into a collective bargaining contract with the company on behalf of all these employees (R. 85-86). Indeed, the UAW-CIO is legally obligated to represent the employees in all the different plants on a fair and equitable basis. Cf. *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332; *Steele* v. *Louisville & Nashville R. R. Co.*, 323 U. S. 192; *Graham* v. *Brotherhood of Locomotive Fireman and Enginemen*, 338 U. S. 232.

In the instant case the State of Michigan sought to apply a bargaining unit different from the bargaining unit which the duly qualified representative under the National Act was in fact representing in its negotiations with the Chrysler Corporation. The strike vote upon which the Chairman of the State Mediation Board was insisting in his telegram to the officers of the UAW-CIO (R. 10) was a vote among the employees of the Chrysler Corporation in the State of Michigan. This limitation of the bargaining unit to employees in Michigan is not only expressly recognized by the Supreme Court of Michigan in its opinion (R. 133), but, indeed, has not been challenged by the State during this entire case. The State has never suggested that it had either the authority or the administrative machinery for taking the votes of Chrysler employees in Indiana and California.

Thus, the UAW-CIO was at the bargaining table with the Chrysler Corporation on behalf of a bargaining unit established and recognized by the National Act. The State of Michigan sought to interject its own procedures into this situation and insist that the Congressionally-authorized representative of the employees yield to a vote by one part

of that bargaining unit to determine what action the representative could take to effectuate its bargaining demands. The strike vote upon which the State Mediation Board was insisting pursuant to the Michigan statute would not have determined whether a majority of the employees involved and a majority in the actual bargaining unit established and recognized by the National Act in fact favored the acceptance of the last offer of the employer. All that the strike vote would have determined was that a certain number of persons in a part of that unit favored, and a certain number of persons did not favor, the action which the representative under the National Act proposed to take.

This Court has held that the states cannot fix collective bargaining units in industries affecting commerce in situations where the conflict was far less real than in the case at bar. *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *LaCrosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18. The *LaCrosse* case is particularly significant. There the Telephone Company had recognized and was bargaining with the International Brotherhood of Electrical Workers as the representative of its plant and traffic department employees. A rival union, the Telephone Guild, filed a petition with the Wisconsin Employment Relations Board asking the State Board, in pursuance of the Wisconsin statute, to certify the collective bargaining representative of these employees. After hearing and election, the Wisconsin Board certified the Telephone Guild as the representative of the employees in the plant and traffic departments. The Wisconsin Supreme Court upheld the Board's action on the ground that the State Board could exercise jurisdiction until the National Board undertook to determine the appropriate bargaining unit. This Court rejected the view taken by the Supreme Court of Wisconsin and invalidated the state de-

termination of the bargaining unit. This Court's action is particularly noteworthy since in the *LaCrosse* case the National Board had not determined a bargaining unit for the company and, for all that appeared, the bargaining unit designated by the State Board was the same as that which would have been designated by the National Board had it been called upon to act. In the case at bar, the National Board had not only determined a bargaining unit, but had set one different from the bargaining unit which the State Board sought to apply. In the *LaCrosse* case, this Court referred to "the very real potentials of conflict." 336 U. S. at 26. In the case at bar, the conflict has passed from the potential to the actual.

The Michigan Supreme Court took cognizance of this argument but rejected it summarily with the statement that "this circumsfance cannot be held to be a restriction upon the exercise in Michigan of the state's inherent police power incident to a strike which is located in this state" (R. 133). The court's statement overlooks the truism that even the state's inherent police power cannot be exercised in conflict with valid Congressional action. See, e. g., *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 155-156. Nor is this in fact a case of "restricting" the "state's inherent police power". The State of Michigan is free to regulate labor relations which do not affect interstate commerce and it is free to combat violence and coercive tactics (*Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; *International Union, U.A.W.A., A. F. of L., Local 232* v. *Wisconsin Employment Relations Board*, 336 U. S. 245). But, as this Court pointed out in the *Allen-Bradley* case, "a distinctly different question" arises when the action of the State Board forfeits "collective bargaining rights" or otherwise conflicts with the National Act. 315 U. S. at 751.

B

The delays imposed by the Michigan statute conflict with the National Act.

Under Section 8(d) of the National Act, a party to a collective bargaining agreement desiring to terminate or modify that agreement must notify the other party 60 days prior to the time it is proposed to make such termination or modification, must notify the federal and state conciliation agencies 30 days prior to such time, and must continue in effect, without strike or lock-out, the terms of the existing agreement for 60 days or until the contract expires. The UAW-CIO complied with each of these requirements; once it did so, it had the right under the National Act to take action to back up its collective bargaining demands.

The Michigan statute would have imposed additional delays upon the collective bargaining representative of the employees. Section 9(1) of the State Act provides that "in the event the parties thereto are unable to settle any dispute, the employees or their representative . . . shall serve notice upon the Board of such dispute . . . not less than 10 days" before a strike. The State Mediation Board is given the duty to seek a settlement of the dispute "by mediation between the parties." Section 9(2). In the event either party notifies the Board that further efforts to settle the dispute by mediation would be without avail, the Board is to take a strike vote. Section 9a. The strike vote is to be held within 10 days of the receipt of the notice, if practicable, and, if not, within 20 days. Section 9a.

Since the state procedure outlined in the previous paragraph goes into effect only when the parties "are unable to settle any dispute", it is clear that the state procedures cannot run concurrently with the time limitations in Sec-

tion 8(d) of the National Act. Thus, Michigan requires time-consuming procedures to begin at the very moment when the National Act leaves the representative of the employees free to back up collective bargaining demands with strike action. Regardless of the fact that the overwhelming majority of the employees may favor a strike during this additional period, the Michigan statute forbids the representative of the employees from taking the action it deems necessary and proper. While this Court has never passed upon this exact question, its decisions in the labor-management relations field clearly indicate that the state may not take conflicting action of the type enacted into law by the Michigan statute under review. *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, No. 419, October Term, 1949, decided February 13, 1950; *La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *Hill* v. *Florida*, 325 U. S. 538. And the Court of Appeals for the Sixth Circuit squarely held that state "delaying" action of a far lesser character violated the National Act even as it existed prior to the more detailed provisions of the Taft-Hartley Act. *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. (2d) 465, 471 (C. C. A. 6th, 1947), *cert. den.* 332 U. S. 762.

C

The Michigan statute conflicts with the right to strike guaranteed by the National Act.

Section 7 of the Taft-Hartley Act, just as did its predecessor, the Wagner Act, accords to employees "the right to self-organization . . . to bargain collectively through representatives of their own choosing, and to engage in

other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." Both of these rights—"to bargain collectively" (see *infra*, pp. 39-40) and "to engage in other concerted activities for the purpose of . . . mutual aid or protection"—include the right to strike. The National Labor Relations Board has so interpreted these provisions since they were first enacted into law in the Wagner Act in 1935 [13] and the legislative history of the Wagner Act leaves little doubt that this was the intention of Congress.[14] This Court, too, has recognized the existence of the right to strike under the Wagner Act. See *National Labor Relations Board* v. *Mackay Radio and Telegraph Co.*, 304 U. S. 333, 345-347; *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240, 256.

The provisions of Section 13 of the National Act reenforce the provisions of Section 7. Section 13 provides:

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

The final clause of Section 13—"or to affect the limitations or qualifications on that right"—was added to the similar provision of the original Wagner Act by the Taft-Hartley Act. That this clause was not intended as a limitation upon the previous right to strike recognized under

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[13] *United Aircraft Mfg. Co.*, 1 NLRB 236, 252; *American Manufacturing Co.*, 5 NLRB 443, enforced, 106 F. 2d 61 (CCA 2d), affirmed, 309 U.S. 629; *Republic Steel Corporation*, 62 NLRB 1008; *Columbia Pictures Corp.*, 64 NLRB 490, 514-515; *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (CCA 6th), enforcing, 66 NLRB 930, 931, certiorari denied, 332 U.S. 762.

[14] Legislative History of the National Labor Relations Act of 1935, Vol. I (Government Printing Office, 1950), pp. 153, 246, 1312, 1344, 1346, 1371.

the Wagner Act is evidenced by the report of the Senate Committee which states:

> "Section 13 has been amended in two respects: (1) By a clause which makes clear that the Wagner Act has diminished the right to strike only to the extent specifically provided by the new amendments to the act; (2) by the addition of the words 'to affect the limitations or qualifications on that right.'
>
> "It should be noted that the Board has construed the present act as denying any remedy to employees striking for illegal objectives (See *American News Co.*, 55 N. L. R. B. 1302, and *Thompson Products*, 72 N. L. R. B. 150). The Supreme Court has interpreted the statute as not conferring protection upon employees who strike in breach of contract (*N. L. R. B.* v. *Sands Manufacturing Company*, 306 U. S. 332); or in breach of some other Federal law (*Southern Steamship Company* v. *N. L. R. B.*, 316 U. S. 31); or who engage in illegal acts while on strike (*Fansteel Metallurgical Corp.* v. *N. L. R. B.*, 306 U. S. 240).
>
> "This bill is not intended to change in any respect existing law as construed in these administrative and judicial decisions." Senate Report No. 105 on S. 1126, p. 28.

That Sections 7 and 13 of the Labor-Management Relations Act do guarantee to employees in industries affecting commerce the right to strike to obtain legitimate economic objectives is also evidenced by the very specific statements of Senator Taft, the author of the National Act, upon the floor of the Senate:

> "Basically, I believe that the committee feels, almost unanimously, that the solution of our labor problems must rest on a free economy and on free collective bargaining. The bill is certainly based upon that proposition. That means that *we recognize freedom to strike when the question involved is the improve-*

ment of wages, hours, and working conditions, when a contract has expired and neither side is bound by a contract. We recognize that right in spite of the inconvenience, and in some cases perhaps danger, to the people of the United States which may result from the exercise of such right. In the long run, I do not believe that that right will be abused. In the past few disputes finally reached the point where there was a direct threat to and defiance of the rights of the people of the United States.

"*We have considered the question whether the right to strike can be modified. I think it can be modified in cases which do not involve the basic question of wages, prices, and working conditions* . . .

". . . So far as the bill is concerned, we have proceeded on the theory that *there is a right to strike* and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours, and working conditions after proper opportunity for mediation." 93 Cong. Rec. 3835 (1947) (emphasis supplied).

The deprivation of the right to strike by the State of Michigan, except insofar as a majority of the employees of a particular bargaining unit cast their votes in favor of a strike, conflicts with the National Act. In this posture of the case, it would appear to be governed by *Hill* v. *Florida*, 325 U. S. 538. There, this Court struck down, as in conflict with the National Labor Relations Act, the provisions of a Florida statute preventing any person from acting as a representative of employees who had not been a citizen of the United States for more than ten years, who had been convicted of a felony, or who was not of good moral character. This Court held that Florida could not place these additional qualifications upon the right of the employees to choose their representatives. No more can

Michigan place an additional qualification upon the right of the employees to engage in strike action.[15]

It will undoubtedly be conceded by appellees that a state cannot prohibit entirely the exercise by employees subject to the National Act of the right to strike. No more can the state condition that right by a provision forbidding its exercise in the absence of a vote or in case of an adverse vote. Indeed, in the present situation the Michigan statute went further than just requiring a majority of those voting to approve the strike. The statute requires that, as a condition of the exercise of the right to strike, a majority of the entire bargaining unit, including those absent and sick and indifferent, must affirmatively vote to approve the strike. This patent effort to restrict the federally protected right to strike cannot stand.

D

The International Union case is inapplicable.

The *International Union* case did not present a case of conflict with the National Act. This Court took great pains to point out that the action to which the state was directing its order in that case was conduct not subject to regulation under the National Act. 336 U. S. at 253, 257. There could, therefore, be no conflict between the National and State Acts.

Furthermore, as we have pointed out above (pp. 26-27 *supra*), this Court was equally careful to indicate that no strike was involved in the *International Union* case, but

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[15] It might be noted, too, that Mr. Justice Frankfurter, dissenting in the *Hill* case, relied heavily upon the fact that "all activities or aspects of labor organizations outside of their right to be free from employer coercion were left wholly unregulated by that [Wagner] Act" (325 U.S. at 559), a condition which the Taft-Hartley Act has radically altered.

only coercive conduct and tactics of a kind which fall within the inherent police powers of the state.

III

The Michigan Statute Violates the Due Process Clause of the Fourteenth Amendment

Because of the points heretofore made in this brief, it is appellants' position that there is no need to consider the constitutionality of the Michigan statute as it applies to them independently of its impact upon the National Act. It is respectfully submitted, however, that the Michigan law imposes unconstitutional restraints upon the appellants' right to strike and upon their rights by speech and assembly to "instigate" or "call" or "cause" a concerted peaceful refusal to work to secure lawful demands. An examination of the strike provisions of Sections 9, 9a and 9b and the conduct made criminal by Section 22, in the light of their effect upon the rights of appellants to take concerted action to secure higher wages and to quit work in concert when satisfactory wages are not offered, will show that the State of Michigan has exceeded permissible constitutional limits.

It is not here contended that the right to strike is an absolute one or that the states cannot consistently with the Fourteenth Amendment restrict in any way the objects for which strike action may be taken, or the methods which employees may use in carrying on their strike.

It is appellants' contention that the right of workers to strike peacefully and for lawful purposes is a fundamental one, like their rights to speak and to assemble; that state action placing restraints upon the exercise of those rights must, if it is to be valid, be narrowly drawn to meet important public interests entitled to such protection. The Michigan statute fails to meet this test.

A

It is by now a truism that in modern industrial society the individual employee's ability to bargain with a large industrial employer to secure satisfactory working conditions is dependent upon his freedom to combine with his fellow employees; and the employee's bargaining strength flows from his ability, acting in concert with other employees, to quit work in order to secure terms which he considers necessary to his welfare. See, *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209; *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 570-571.

In a recent study "Strikes and Democratic Government" (1947) the Labor Committee of the Twentieth Century Fund has pointed out how essential the right to strike is to any real collective bargaining:

> "In genuine collective bargaining . . . the possibility of a strike or lockout is . . . an ever-present and controlling factor in the realistic processes of collective bargaining. Those processes lose all color of reality if the workers have not the right to reject management's offer and quit, or if management has not the right to refuse the workers' terms and close the plant. It is the overhanging pressure of this right to strike or to lockout that keeps the parties at the bargaining table and fixes the boundaries of stubbornness in the bargaining conferences . . . Unless the negotiating parties are faced with this possibility of a strike or a lockout, and are forced to examine and accept the consequences of their own decision, they are free from the responsibility that makes genuine collective bargaining possible and produces through it creative results. Thus, for the ordinary labor dispute, the possibility of a strike or lockout is, in the last analysis, the most potent instrument of persuasion" (pp. 13-14).

It is impossible to read the opinions of this and other courts dealing with the rights of workers to organize, to bargain collectively and to implement their union activity by free speech and peaceful assembly without concluding that the right to strike—"the unquestioned right to quit work" (*National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240, 256)—is a fundamental liberty in our democratic society and under our Constitution. See *Iron Moulders' Union* v. *Allis Chalmers Co.*, 166 Fed. 45, 50 (C. C. A. 7, 1908), *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 534; 267 U. S. 552, 569; *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S.S. Clerks*, 281 U. S. 548, 570-571; *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33; *In re Porterfield*, 28 Cal. (2d) 91, 114-118, 168 P. (2d) 706, 720-722 (1946); *Bayonne Textile Corp.* v. *American Federation of Silk Workers*, 116 N. J. Eq. 146, 152-153; 172 Atl. 551, 554 (1934). Absent that right, free collective bargaining concerning the terms and conditions of employment disappears and the right of workers to organize becomes a hollow shell. The employees must then work on terms dictated by the employer and there is no power to secure redress from "a harsh overlordship or unwholesome conditions of work." *Pollock* v. *Williams*, 322 U. S. 4, 18.

When basic personal rights have been curtailed by legislation, this Court has prescribed strict standards which must be met before the curtailment will be sustained. The presumption of validity applicable to other types of regulatory legislation is not effective; there must be clear affirmative support for the restraints; and, if the regulation is to stand, the statute "must be narrowly drawn" to deal with the precise evil which the legislature seeks to curb. See *United States* v. *Carolene Products Co.*, 304 U. S. 144,

152-153; *De Jonge* v. *Oregon*, 299 U. S. 353, 364-365; *Lovell* v. *Griffin*, 303 U. S. 444, 451; *Schneider* v. *State of New Jersey*, 308 U. S. 147, 161; *Thornhill* v. *Alabama*, 310 U. S. 86, 105; *Cantwell* v. *Connecticut*, 310 U. S. 296, 311; *Thomas* v. *Collins*, 323 U. S. 516, 530. The provisions of the Michigan statute here involved fail to meet these standards.

B

The prohibition by Michigan of strikes and action inducing strikes unless the prerequisites of the statute can be and are met is arbitrary and sweeping in scope:

(1) All strikes are embraced. The statute is not limited to strikes in "sensitive" industries or to situations in which public health or safety may be imperiled or to those which may otherwise adversely affect the public in peculiar and important respects.

(2) The restrictions apply to all strikes regardless of their purpose. Disputes are defined in Section 2(b) of the Michigan statute to include any controversy between employer and employee concerning terms of employment. In the instant case appellants' strike was called to gain wage increases, a classic and lawful reason for refusal to continue work.

(3) The restrictions apply regardless of the merits of the controversy and regardless of how great the provocation.

(4) The restrictions apply without requiring any finding by a state agency that any public emergency will be created by the strike in question or that the injury to the public interest will exceed the damage done to the interest of the workers

by compelling them to work on terms dictated by the employer.[16]

(5) The prior restraints which the statute imposes are not only upon all kinds of peaceful strikes for all kinds of lawful purposes, but also upon the speech and assembly which induce such strikes. For the statute makes criminal the "instigation" of a strike or "calling" or "causing" a strike without first meeting the conditions which are imposed. These restraints cover not only the conduct of union officials but also that of the workers assembled in union meetings to consider the terms of their employment contract being negotiated. Strikes are "instigated" and "called" and "caused" by spoken and written speech, by discussion, counsel and persuasion in and out of assemblies of the employees.

C

The scope of the statute is not only arbitrary in its sweep, but the regulations are unreasonable and discriminatory in the light of any discernible evil which the legislature was entitled to suppress.

1. The statute requires that the majority of the entire bargaining unit as determined by the State Board must vote approval before strike action is permitted. The rights of the employees who desire to strike and who vote their approval can be defeated by those persons in the bargaining unit who are unable to cast their ballots because of illness, absence or otherwise, or who neglect or are unwilling to vote. Thousands may be compelled to work for inadequate wages

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[16] This Court said in *Thornhill* v. *Alabama*, 310 U.S. 88, 103:

"It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned."

or under unhealthy conditions because of the indifference of a few who fail to express their views. The votes of non-union members may determine what action the union members may take. The votes of non union members may be based upon considerations unrelated to the merits of the wage controversy and may even be based upon the desire to embarrass the union. And in the instant case, because the unit which bargains with the Chrysler Corporation covers many employees in other states, a negative vote by a majority of the workers in Michigan or even their indifference can effectively frustrate the desires of a clear majority of all the workers affected.

2. The employees are called upon to defray half the cost of the election. Their right to quit work is thus subjected to a direct financial charge which, as in the case of the Chrysler Corporation with more than 65,000 employees, may be substantial and thereby burden and discourage the exercise of the right to strike. Cf. *Murdock* v. *Pennsylvania*, 319 U. S. 105.

3. Under Section 9(g) of the Michigan statute, if requested by the employer or by "the collective bargaining unit", the Board is required to print on the ballot or to attach thereto "a copy or statement of the most recent offer submitted by the employer in the course of collective bargaining negotiations . . ." No provision is made for an independent evaluation of the truth of the statement or the good faith of the employer in proffering it. Nor is provision made for submission at the time of vote of a statement by the Union of its "most recent offer."

4. No requirement is imposed by the State upon corporate employers that approval be secured by a majority vote of their stockholders before the employer can reject the Union's last offer. There is only the one-sided require-

ment that the employer's last offer must be submitted to a vote of the employees.

5. The effectiveness of the strike in the bargaining process is blunted further by the delays which the strike vote procedure imposes. See *supra*, pp. 32-33. There is imposed upon the employees desiring to strike, even in cases where they do obtain a majority vote in the state poll, a delay for a period of twenty to thirty days or longer,[17] during which they are compelled to work upon terms set by the employer. The timing of strike action has, of course, an important bearing upon the effectiveness of the strike or the threat of a strike.

6. The Michigan statute makes the quitting of work itself a crime, just as it does the speech and assembly which instigate or cause employees to quit work in concert. The statute does not merely deprive appellants of their status as employees or of other affirmative protections of strikers. The statute makes it a criminal offense[18] punishable by fine and imprisonment for any one person or any group of persons to "instigate" or "call" or "cause" a strike during the period of mediation or "while an election is pending." Section 22. Section 9b provides that "it shall be the duty of both employees and employer to avoid a cessation of employment or a change

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[17] Experience with representation elections shows that questions of challenged and improperly marked ballots frequently arise which require time and investigation to resolve. This situation would further delay the date when the strike could be put into effect.

Moreover, by reason of Act 21, P. A. 1947, Mich. Stats. Ann. § 27.545(1) permitting appeals to the circuit courts from any "order, decision or opinion" of the Mediation Board, means are available to prevent completion of the statutory steps prerequisite to an authorized strike for additional periods of time.

[18] The statute apparently also authorizes an injunction against the strike. Section 22a authorizes the Board or any other party to "pursue any proper . . . equitable remedy or relief" against "any act or conduct in violation of any of the provisions of this act."

in the normal operations of the business during the entire period in which the respective steps required by Section 9 of this Act are being taken or until a strike is authorized by an election held as approved in section 9a." Pursuant to these provisions, the Chairman of the State Mediation Board on May 11, 1948 notified the Union that "any *work stoppage* at Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended" (R. 10). (Italics supplied.)

A strike is "caused" by the employees quitting work in concert. The act of each of the employees participating is thus made a criminal offense by the State of Michigan, and each employee must therefore work against his will and upon terms which are set by the employer.[19] The court below attempts to avoid recognizing that compulsory employment is thus imposed by the statute (Cf. *Pollock* v. *Williams*, 322 U. S. 4, 17-18; *Arthur* v. *Oakes*, 63 Fed. 310, 319 (C. C. A. 7th, 1894)) by referring to the provision in section 13(a) of the Michigan statute which states:

> "Nothing in this Act shall be construed to require an employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment."

The Supreme Court of Michigan refers to this provision at one point in its opinion (R. 128) as though, like the Wisconsin statute construed in *Hotel and Restaurant Employees', etc.* v. *Wisconsin Employment Relations Board*, 236 Wis. 329 (affirmed 315 U. S. 437), the Michigan Act

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[19] No means are afforded by the State to fix fair and reasonable terms of employment for those who are forbidden to quit work. State mediation will by that time have been tried and have failed. The underlying disagreement between the parties remains unresolved, and the bargaining representative must necessarily withdraw its demand since it cannot back it up.

did not prevent "a minority of a collective-bargaining unit from withdrawing from employment either singly or in concert." 236 Wis. at 345. It is impossible so to construe section 13(a) of the Michigan Act without sapping all meaning from the nub of the statute and the Michigan Supreme Court has not so construed it. The basis of the decision below is that the statute does and the state may make criminal the action of all members of the union who "cause" a strike by quitting work in concert as well as the speech and assembly of any of them which "instigate" or "cause" or "call" such action into effect.

D

When basic liberties are thus restricted, there must be an affirmative showing of a strong public interest seriously threatened which will be served by the restrictions. The test of "reasonableness" which due process requires in such situations is not lightly met. *Thomas* v. *Collins*, 323 U. S. 516. The general interest of the state in the "peace, health and comfort" of the people was held insufficient to sustain a state system of compulsory arbitration of disputes as to terms of the employment contract even when applied to a limited class of industries. *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 534; 267 U. S. 552. Under the Kansas statute there held invalid under the Fourteenth Amendment, a dissatisfied laborer was forbidden to "agree with his fellows to quit or combine with others to induce them to quit." 262 U. S. at 534. And the "social value" in "enforcing contracts and collection of debts", though "great", has been held insufficient to sustain suspension of the right to be free from compulsory employment. *Pollock* v. *Williams*, 322 U. S. 4, 18.

The only "finding" which the legislature made was that "strikes and lockouts . . . . , regardless of where the

merits of the controversy lie, are forces productive ultimately of economic waste.". The alleged justification "inferred" by the court below was the "desire to prevent stoppage of work in a plant as to all of the employees, which stoppage was caused by a small number of employees in a key position going on strike" (R. 126). But there was no showing that strike action is taken by unions in Michigan without adequate provision for first securing the approval of the strike by their membership through democratic processes. In the instant case the Constitution of the appellant Union[20] provides that each Local involved must by secret balloting approve strike action by a two-thirds vote of its members (R. 11). The duly elected International Executive Board of the Union must then approve the recommendations of the Locals before the strike action can be put into effect (R. 12). The strike recommendations in the instant case were made by the Chrysler Locals and approved by the Executive Board under these provisions of the Union's Constitution (R. 16).

The State could not reasonably find that the restraints which the statute imposed upon strike action were necessary to protect the process of collective bargaining by the majority. The statute is not drawn so that it merely prohibits strike action taken in the face of an existing collective agreement negotiated by the bargaining representative of the majority of the employees; nor is the statute limited to situations in which strike action is taken contrary to the decision of the organization of employees which is authorized to bargain with the employer as the majority representative. Cf. Section 8(b)(4)(C) of the National Act. A different question would be presented if a statute so limited were here involved. In the instant case the statute was held applicable to a strike decided upon by the

[20] The United Automobile Workers (UAW-CIO), the appellant, is the largest Union in Michigan (R. 41).

UAW-CIO which was the only recognized bargaining representative of the employees. The strike was approved by the membership through their own democratic union machinery. The strike was called upon the termination of an existing contract and was directed at securing acceptable wages in the new agreement which the UAW-CIO was negotiating and which it alone could negotiate. The statute, nonetheless, made criminal such strike action. The statute thus compels the bargaining representative to accept terms of employment which it has rejected in the course of bargaining.

The statutory provisions here involved cannot, therefore, be sustained as a proper concomitant of legislation and industrial practice under which unions as majority representatives deal for all employees in the bargaining unit. Cf. *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332.

E

No decision of this Court deals with the precise question at hand. However, similar restraints upon the right to strike and its incidents have been held invalid by a statutory federal district court and by the highest courts of two states.

In *Stapleton v. Mitchell*, 60 F. Supp. 51 (D. Kans. 1945), the court considered and found unconstitutional the provision of a Kansas statute which made it unlawful for any person "to participate in any strike, walk-out or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby, provided that this shall not prohibit any person from terminating his employment on his own volition."

The court emphasized that:

> "The right to peaceably strike or to participate in one, to work or refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the State may not condition or abridge in the absence of grave and immediate danger to the community." 60 F. Supp. at 61.

The Alabama Supreme Court has struck down as repugnant to the Fourteenth Amendment provisions of a state statute which prohibited strikes except when authorized by a vote of the majority of the regular employees working in the plant or business. *Alabama Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810 (1944). It is true that the Alabama statute required the majority vote of all the employees in the plant or business and thus might in some cases cover employees outside the bargaining unit affected. But the court's decision that the statutory restraint violated the Fourteenth Amendment rests upon broader grounds. The court emphasized that,

> "each individual has a right to strike for a legally justifiable purpose, and such a right, of course, rests upon a minority as well as upon a majority." [21]

In *American Federation* v. *Bain et al.*, 165 Ore. 183, 106 P. (2d) 544 (1940), a statute which prohibited picketing by a minority of employees as an incident to a strike was likewise held invalid under the Fourteenth Amendment.

The heavy reliance of the Michigan Supreme Court in the instant case upon the *International Union* case was misplaced. What was there upheld against attack on grounds of due process was a restraint upon an "unan-

[21] The court also adverted to the fact that the statute, like the Michigan law, applied "to a perfectly lawful strike, for a lawful purpose conducted in a lawful manner." 246 Ala. at 21.

nounced stoppage of work to win unstated ends", not a restraint upon a strike peacefully conducted to achieve proper wage demands. The opinion of this Court pointed out that in that case "nothing in the statute or the order makes it a crime to abandon work individually, compare *Pollock* v. *Williams*, 322 U. S. 4, or collectively." 336 U. S. at 251.[22]

The restraints upon the right to strike or to induce strikes or upon picketing which attend strikes which this Court has upheld have been those which did not defeat the fundamental right of employees to quit work in concert as part of the process of orderly collective bargaining to secure acceptable terms of employment. The state statutes upheld by this Court have been those which, for example, imposed restraints upon striking to attain demands unrelated to the purposes for which collective bargaining traditionally exists, *Dorchy* v. *Kansas*, 272 U. S. 306; or restraints against collective action to achieve results which violate a state policy in another area incorporated in a valid and independent statute, *Giboney et al.* v. *Empire Storage & Ice Co.*, 336 U. S. 490; or restraints which were imposed upon violence attending the strike or the picketing, *Allen-Brad-*

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[22] The court below likewise relied upon the case of *Hotel and Restaurant Employees International Alliance, etc.* v. *Wisconsin Employment Relations Board*, 236 Wis. 329, 294 N. W. 632, and upon this Court's affirmance of that decision in 315 U. S. 437. The Michigan Supreme Court noted that the Wisconsin statute there involved required a majority vote calling a strike before picketing became lawful. But this Court carefully pointed out that the sole question before it was the validity of an order under the Wisconsin statute construed by the Wisconsin Supreme Court as being directed only against violence and not against picketing which was peaceful. And the Wisconsin Court expressly found that there was "nothing in the Act which prevents a minority of a collective bargaining unit from withdrawing from employment either singly or in concert." 236 Wisc. at 345.

ley Local No. 1111 v. *Wisconsin Employment Relations Board*, 315 U. S. 740.

The court below could point to no decision of this Court which has upheld a state statute making strikes or speech or other conduct which induces or attends them criminal offenses where the restraints are imposed upon action undertaken for lawful ends and pursued peaceably. Whatever may be the exact contours of the protection which the Federal Constitution throws around the right of free men to organize, to bargain collectively and to strike for acceptable terms of employment, they embrace the conduct of the appellants which the State of Michigan has made a crime.[23]

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[23] This Court has never decided whether the protection of the Thirteenth Amendment applies only against "individual bondage" or whether it is violated as well by a state statute which makes it a crime for employees to quit their employment collectively and peacefully to secure acceptable conditions of employment. See concurring opinion of Rutledge J. in *American Federation of Labor et al.* v. *American Sash & Door Co.*, 335 U. S. 538, 559. This Court has, however, said that the "undoubted aim of the Thirteenth Amendment as implemented by the Anti-peonage Act was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States", *Pollock* v. *Williams*, 322 U. S. 4, 17, and that the amendment as implemented "means that no state can make the quitting of work any component of a crime . . ." (322 U. S. at 18).

In answering the contention of the Union in the *International Union* case that the Wisconsin statute as there applied imposed "a form of compulsory service or involuntary servitude" in violation of the Thirteenth Amendment, Mr. Justice Jackson pointed out that "nothing in the statute or the order makes it a crime to abandon work individually, compare *Pollock* v. *Williams*, 322 U. S. 4, *or collectively*." 336 U. S. at 251 (italics supplied). The Michigan statute's prohibition against a collective work stoppage presents a different question.

Since the questions of "involuntary servitude" under the Thirteenth Amendment and unreasonableness under the Fourteenth Amendment would appear to be predicated on similar considerations, no elaborate argument on this point seems required.

Conclusion

It is respectfully submitted that the Michigan statute (a) invades a field which Congress has occupied, (b) conflicts with the National Act, and (c) violates the due process clause of the Fourteenth Amendment. The judgment of the court below should be reversed.

Respectfully submitted,

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February 23, 1950.

APPENDIX "A"

MICHIGAN STATUTE

Act No. 176 of the Public Acts of 1939, as amended by Act No. 318 of the Public Acts of 1947.

Sec. 2. When used in this act, unless the language or context indicates otherwise: . . .

(b). The terms "dispute" and "labor dispute" shall include but are not restricted to any controversy between employers and employes or their representatives as above defined, concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining or changing terms or conditions of employment. . . .

Sec. 9. No strike or lockout shall take place or be put into effect until and unless each of the steps have been taken and the requirements complied with as provided in this act.

1. In the event the parties thereto are unable to settle any dispute, the employees or their representative, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice upon the board of such dispute together with a statement of the issues involved. Said notice may be served personally on any member of the board and a copy thereof personally served upon the other party, or sent by registered mail to the board at a regularly established office thereof and to the employer at his regular address not less than 10 days before the strike or lockout is to become effective, or in case of an industry affected with a public interest or a public utility or hospital, said notice shall be so served not less than 30 days before the strike or lockout is to become effective.

2. Upon receipt of such notice it shall be the duty of the board to exercise the powers herein granted to effect a settlement of such dispute by mediation between the parties. Prior to the calling of an election as provided hereinafter, it shall be the duty of each of the parties to such dispute to actively and in good faith participate in the mediation

thereof. At least 1 member of the board, to be designated by the chairman, shall actively participate in the negotiations to mediate any dispute in an industry affected with a public interest including any public utility or hospital.

Sec. 9a. In the event that it becomes apparent to the board that there is no reasonable probability of settlement of such dispute by mediation and that further efforts to that end would be without avail, there shall be held in the case of any impending strike, an election upon such issue which election shall be conducted and supervised by the board. In the event either party to said dispute notifies the board in writing, a copy of which shall at the same time be served on the other party, that in the opinion of such party, further efforts to settle such dispute by mediation would be without avail, it shall be the duty of the board to cause an election to be held within 10 days of the receipt of such notice unless it is not practical to hold such election within said period, in which event said election shall be held within 20 days of receipt of such notice: PROVIDED, That such board need not call more than 1 election involving the issues set forth in the notice served upon the board. The expense of such election shall be defrayed by the parties to such dispute either equally or upon such other basis as may be agreed upon. Every employee in the bargaining unit shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees in such bargaining unit must vote in favor of such action. Said election shall be by secret ballot, and shall be held on the premises where those voting are employed. The board shall have the power and authority to promulgate such rules and regulations as shall be necessary to effectively conduct any election and the wilful violation of any such rules and regulations shall be a violation of the provisions of this act.

Sec. 9b. It shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a.

Sec. 9e. The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: PROVIDED, HOWEVER, That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for collective bargaining, the board shall adopt such unit.

Sec. 22. Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, or who shall cause or call a lockout, without first having served notice as required in section 9 of this act, or while mediation is pending as provided in section 9c of this act; or while an election is pending under said section 9, or while arbitration proceedings are pending under sections 9d and 13 of this act, or any person who shall engage in unauthorized picketing as prohibited by this act, or who shall knowingly and wilfully violate any of the rules or regulations promulgated under section 9a and section 9c, or any of the provisions of section 9f, shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

Sec. 22a. The board, or any person, labor ~~organization~~, firm or corporation may pursue any proper legal or equitable remedy or relief in any court of competent jurisdiction for any act or conduct in violation of any of the provisions of this act.

APPENDIX "B"

Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141 *et seq.*).

Sec. 1(b). Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act . . .

Sec. 8. (d). For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the em-

ployees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later;

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual,

which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purpose of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

Sec. 14. (b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

Sec. 209. (b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of the sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish

to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., ET AL.,

Appellants,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

STEPHEN J. ROTH,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., EMIL MAZEY, IN HIS OWN BEHALF AND IN BEHALF OF 1776 EMPLOYEES OF THE CHRYSLER CORPORATION, NORMAN MATTHEWS, ARTHUR GRUDZEN, ALEX BARBOUR, WILSON KUCK, RALPH FILECCI, ALFRED S. MARCANGELO, RICHARD T. LEONARD, LEONARD McPHERSON, FREDERICK JOHNSTON, WALTER ROOD, WILLIAM T. ARCHER, MICHAEL LACEY, HARRY SOUTHWELL, AND BLAIN MARRIN,

Plaintiffs and Appellants,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

Defendants and Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

APPELLEES' STATEMENT DISCLOSING MATTERS AND GROUNDS MAKING AGAINST JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

The appellees, believing that the matters set forth below will demonstrate the lack of substance in the Federal questions raised by this appeal, file this, their statement dis-

closing matters and grounds making against jurisdiction, and pursuant to Court Rule 13, § 3, they respectfully move the Court to dismiss the appeal or affirm the judgment of the court below, on the ground that the Federal questions raised on behalf of appellants, are so unsubstantial as to need no further argument, and therefore warrant the Court in summarily disposing of the appeal at this stage of the proceedings, *specif.*, because

1. In passing upon the substance of such questions, the Court will consider themselves bound by the decision in this cause, *UAW-CIO v. Wayne County Prosecuting Attorney*, 325 Mich. 250, 38 N. W. 2d 421, insofar as the state court determined "the meaning or effect of a statute,"[1] *viz.*, Act No. 176, Pub. Acts Mich., 1939, as amended, Comp Laws 1948, § 423.1 et seq., Stat. Ann. 1947 Cum. Supp. § 17.454 (1) et seq., entitled "AN ACT to create a board for the mediation of labor disputes, and to prescribe its powers and duties; to provide for the mediation and arbitration of labor disputes, and the holding of elections thereon; to provide for the creation of arbitration boards; to regulate the conduct of parties to labor disputes and to require the parties to follow certain procedures; to regulate and limit the right to strike and picket; to protect the rights and privileges of employees, including the right to organize and engage in lawful concerted activities; to protect the rights and privileges of employers; to make certain acts unlawful; to prescribe penalties for violations of the provisions of this act; and to repeal sections 8616 to 8628, inclusive, of the Compiled Laws of 1929, and all other acts or parts of acts inconsistent with the provisions of this Act."

2. It appears upon the face of the record, that the decision of the court below, which rejected the claim

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[1] *Greenough* v. *Tax Assessors*, 331 U. S. 486, 497.

that the provisions of §§ 9, 9a, 9b, 9c and 22 of the act aforesaid, prohibiting the calling of a strike unless and until the majority of all employees in the collective bargaining unit have so voted in a state-conducted election, conflict with the provisions of the National Labor Management Relations Act of 1947,[2] was plainly right and in accordance with well-considered judgments of this Court in similar cases,

Kelly v. *Washington*, 302 U. S. 1, 10;
Auto Workers v. *Wisconsin Board*, 336 U. S. 245;
Algoma Plywood Co. v. *Wisconsin Board*, 336 U. S. 301.

3. The court below was also plainly correct in holding that the provision of the foregoing statute requiring a vote of the majority of employees belonging to a collective bargaining unit as a prerequisite to calling a strike, is not so unreasonable an exercise of the police power of the State as to be unconstitutional as denying freedom of speech and of assembly of due process of law, Federal Constitution, 1st and 14th Amendments, such decision being in harmony with the aforesaid judgments of this Court, and with

Lincoln Union v. *Northwestern Co.*, 335 U. S. 525;
A. F. of L. v. *American Sash Co.*, 336 U. S. 538.

We respectfully invite the Court to read the opinion of the court below, wherein the questions involved are much more clearly discussed than we could ever hope to present them.

Wherefore, appellees respectfully submit this statement disclosing the foregoing matters and grounds making

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[2] National Labor Relations Act, §§ 1-17, as amended by National Labor Management Relations Act of 1947, §§ 1-407, 29 USC §§ 141-197.

against the jurisdiction of this Court, and in that connection, their motion to dismiss or affirm.

Respectfully submitted,

STEPHEN J. ROTH,
Attorney General of Michigan,
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In the

Supreme Court of the United States

October Term 1949

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No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., ET AL.,

APPELLANTS

v.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY, AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

APPELLEES

On Appeal from the Supreme Court of the State of Michigan

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Appendix "C"

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1949

No. 456

On Appeal from the Supreme Court of the State of Michigan

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., ET AL.,

APPELLANTS

v.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY, AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

APPELLEES

BRIEF FOR APPELLEES

I

Opinions Below

The opinion of the Supreme Court of the State of Michigan, is officially reported in 325 Mich. 250; it appears un-

officially in 38 N.W. 2d 421; and it is published (121-134) in the printed transcript of record.[*]

The transcript of record also contains the unreported opinion (66-69) of the circuit court for the county of Wayne in chancery.

II

Jurisdiction

We accept appellants' statement of jurisdiction as set forth in their counsel's brief, p. 2.

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[*] Unless otherwise plainly indicated by the context, numbers in parentheses throughout this brief, refer to pages of the printed transcript of record.

III

Counter-Concise Statement of the Case

1

Defining the narrow issue here involved

The litigation below drew in question within a narrow range, the validity of certain "strike-election" provisions of § § 9, 9a, 9b, and 22 of the Michigan labor mediation law as added or amended by the Bonine-Tripp Act of October 11, 1947,[1] the contention being that such sections combined "to transgress constitutional limitations imposed by the Fourteenth Amendment and by the Commerce Clause[2] as implemented by the Labor Management Relations Act of 1947", [3] 61 Stat. 136; 29 U.S.C. § § 141-197.

A close analysis of the challenged "strike-election" provisions of the Bonine-Tripp Act of 1947, will we think disclose that § § 9 and 9a were so radically altered by amend-

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[1]

Properly cited as Act No. 176, Pub. Acts Mich. 1939, § § 9, 9a, 9b, 9e, 22, and others, as added or amended by Act No. 318, Pub. Acts Mich. 1947, effective October 11. This version of the statute will be found in 3 Mich. Comp. Laws 1948, § § 423.1-423.22a. For convenience of the Court we publish the entire text as our Appendix "A", post, pp. 55-73.

[2]

U.S. Const., Art. 1, § 8, Cl. 3, giving the Congress power "To regulate commerce . . . among the several states".

[3]

Paraphrasing the language of this Court's opinion in Auto Workers v. Wisconsin Board, 336 U.S. 245, 247-248.

ment in 1949,[4] that they no longer operate upon appellants in precisely the same manner as they did when the controversy arose in May 1948, and that the penalty clause of § 22 alone survives in original form by virtue of a general law of the State of Michigan which saves it from destruction by such amendment.[5]

The pertinent provisions of § 22, Comp. Laws Mich. 1948, § 423.22, as originally enacted by the Bonine-Tripp Act of 1947, so far as applicable to this cause, are as follows:

> "Sec. 22. Any person who either individually or as one of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, . . . *while an election is pending under section 9*, . . . shall upon conviction be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment." [Emphasis supplied].

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[4]

Act No. 230, Mich. Pub. Acts 1949, effective May 31, 1949, amended 12 sections of this act, including those in question, and it added 10 new sections, all of which changed the entire complexion of the statute. The objectionable feature of the election provisions of § 9a were amended to require a majority of those who voted rather than a majority of all the members of the bargaining unit; and the penalty clauses were greatly strengthened. The court below held, 325 Mich. 254, that they were not concerned with the latest amendment to the statute. The pertinent sections as so amended, appear in our Appendix "B", post, pp. 74-79.

[5]

Mich. Comp. Laws 1948, § 4.4a, Stat. Ann. [Henderson] § 2.214, provides: "The repeal of any statute or part thereof shall not have the effect to release or relinquish any penalty, forfeiture, or liability incurred under such statute or any part thereof, unless the repealing act shall so expressly provide, and such statute and part thereof shall be treated as remaining in force for the purpose of instituting any . . . prosecution for the enforcement of such penalty". This applies to amendatory acts as well, McDowell v. Warden, 169 Mich. 332.

Thus it should be noted at the outset that § 22 did not then and does not now penalize a person who instigated a strike, or who called or caused a strike to be placed in effect, *after* the election directed by § § 9 and 9a had been held, and that such a strike could be called with impunity even though the majority voted against it.[6]

2

Summary of pertinent provisions of Michigan labor mediation act of 1939, prior to 1947.

The labor mediation law of Michigan, in its original form, Act No. 176, Pub. Acts 1939, effective June 8, created a board for the mediation of labor disputes, § 3, and prescribed its power and duties, § § 4, 7, 10, 11, 12; it provided for creation of special mediation commissions in disputes involving public utilities and hospitals, § 13; it regulated the conduct of parties to labor disputes, § § 9 and 9a; it protected the rights and privileges of employes, § § 14, 16, including the right to organize and engage in lawful concerted activities, § 8; it recognized certain rights and privileges of employers, § § 15, 17; and though it contained no general penal clause, it provided specific penalties for violation of certain sections.

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[6] It is our position that when so construed, § 22 as originally enacted by the Bonine-Tripp Act of 1947, which in that form constitutes the only presently-enforcible provision to survive impact of the amendatory statute of 1949 (No. 230), does not violate any constitutional right, nor does it conflict with Taft-Hartley. All questions now suggested which involve other sections of the Michigan labor mediation law, have become moot by virtue of the 1949 amendments. The issue here, though presented and considered below in a somewhat broader aspect, is therefore extremely narrow.

Section 1 of the act, which still stands unamended, declared the general purpose of the law to be as follows:

> "Section 1. It is hereby declared to be the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and health, welfare, comfort and safety of the people of the State".[7]

Further evidence of the broad scope of the act will be found in § 19 the provisions of which stated:

> "Sec. 19. This act shall be deemed an exercise of the police power of the State of Michigan for the protection of the public welfare, safety, prosperity, health and peace of the people; and all provisions of this act shall be liberally construed for the accomplishment of said purpose".[8]

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[7]

Cf. Labor Management Relations Act of 1947, § 1 (b), 61 Stat. 136, 29 U.S.C., Supplement II, § 141 (b), declaring the basic purpose and policy of the Act or Chapter to be promotion of the full flow of commerce. See, California v. Zook, 336 U.S. 725, 728.

[8]

"This section", the Supreme Court of Michigan has said, 294 Mich. 633, "leaves no doubt as to the intent of the legislature to have this act apply to all labor disputes in the state in the interests of the public welfare".

The general scheme of mediation established by the act of 1939 prior to the amendment here in question (1947), was this: In the event of a labor dispute and inability to settle it, no strike or lockout was permissible unless notice were served by the parties upon the board or any member thereof, together with a statement of the issues involved, § 9; then, for a five-day minimum period after service of such notice, it became the duty of the parties to the dispute to mediate and "to use their best efforts to avoid a cessation of employment or a change in the normal operation of the business", a violation of such provisions to be a misdemeanor punishable as such, § 9a; and, after receipt of the notice aforesaid, it became the duty of the board to assist in settlement of the dispute, §10, and to conduct hearings for that purpose, with power to compel the attendance of witnesses, §11.

3

Analytic Summary of pertinent provisions of Michigan labor mediation law, as amended by Bonine-Tripp Act of 1947 [the law here in question]

Act No. 318, Mich. Pub. Acts 1947, the Bonine-Tripp Act, effective October 11 of that year,[9] amended § § 9, 9a and 13 of the Michigan labor mediation act of 1939, *supra*, and it added thereto 9 new sections to stand as § § 9b to 9g, inclusive, 13a, 22 and 22a. The title of the statute was amended to indicate the changes thus effected.[10]

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[9]

The amendatory act was approved July 1, 1947, and under the terms of the State Const. 1908, Art. V, § 21, it became effective Oct. 11, 90 days after final adjournment of the legislature.

[10]

Under the State Const. 1908, Art. V, § 21, no law shall embrace more than one object which shall be expressed in its title.

A clear understanding of the nature of the questions presented, and due appreciation of the restricted issues, seem to require the following analytic summary of the statute as it stood when the appellants on May 12, 1948, claiming the law to be invalid, chose deliberately to violate § 22 thereof by instigating a strike *pending* an election called pursuant to § § 9 and 9a.[11]

The various sections of the Michigan labor mediation law as it then existed, may for the purpose of such analysis be said to fall into six general categories;

(1) those declaring the public policy of the State and the scope of the statute in exercise of the police power, *viz.*, § § 1, 19, and 20;

(2) those creating a state board of mediation and defining the powers and duties of its members, *viz.*, § § 3 to 7, inclusive, 12 and 13a;

(3) those recognizing certain rights of employees and employers, *viz.*, § § 8, 13a, 14, 15, 16 and 17;

(4) those providing both voluntary and compulsory arbitration of labor disputes arising in the conduct and management of public utilities, *viz.*, § § 13 and 13a;[12]

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[11]

It is important to note that the questions which the Court should consider upon this review, do not involve the validity of any penal section which punishes upon conviction the calling or instigation of a strike after an election has been held.

[12]

The Michigan Supreme Court in Local 170, T.W.U.A., C.I.O., v Genesee Circuit Judge, 322 Mich. 332, held the compulsory arbitration provision of § § 13 and 13a invalid because they require a circuit judge to serve as arbitrator, contrary to State Const., Art 4, § 2, and Art. 7, § 9. But this did not invalidate other sections of the statute, 322 Mich. 350.

(5) those providing remedies and prescribing penalties for violation of certain specific sections, and no others., *viz.*, § § 22 and 22(a):

—and—

(6) those directly involved in this litigation, which encouraged and so far as might be possible prolonged both by directives and mandates the continued mediation and efforts to settle labor disputes, *viz.*, § § 9, 9a, 9b, 9c, 9d, 9e, 9f, 9g, and 22.

1. The first section of the Michigan labor mediation law, which declared public policy, remained unchanged, as did § 19 which provided that the act should "be deemed an exercise of the police power of the State of Michigan for the protection of the public welfare, safety, prosperity, health and peace of the people" and that all the provisions thereof should be liberally construed "for the accomplishment of said purposes".

2. The purely-administrative provisions of the act, §§ 3-7, incl., 12 and 13a, may be laid aside as inapplicable to the present controversy.

3. Those sections which define the respective rights of employers and employees, § § 8, 13a, 14, 15, 16 and 17, are important only as they indicate Michigan's general policy toward the affected parties to labor controversies, and the impartial hand with which the legislature of the State has protected such rights.

It is pertinent to note, however, that § 8 of the act provided it should be lawful "for employees, to organize together or to form, join, or assist in labor organization, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid

and protection, or to negotiate or bargain collectively with their employers through representatives of their own free choice".

The second paragraph of § 13a reads as follows:

> "Nothing in this act shall be construed to require an employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment. No court shall have power to issue any process to compel any such employee to continue to render such labor or remain at his place of employment without his consent.[13]

Of those remaining in this group, § 14 deals with closed-shop agreements; § 15 makes it unlawful to take possession of property, against the will of the owner thereof, etc., and thus penalizes "sit-down strikes", so called; § 16 makes it unlawful for an employer

> "to initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization; to discriminate in regard to hire, terms or other conditions of employmeir tin order to discourage membership in any labor organization; or encourage membership in, or initiate, create, dominate or contribute to a company union; or to discriminate against an employee because he has given testimony before the board or [arbitration] commission. Violation of this section shall be a misdemeanor and punishable as such";

and § 17 makes it unlawful "for any employee or other

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[13] This paragraph of § 13a lifts from the strike-election provisions of § § 9, 9a and 9b any charge that they impose involuntary servitude.

person by force, coercion, intimidation or threats to force, or attempt to force any person to become or remain a member of a labor organization, or for any employee or person by force . . . to force any person to refrain from engaging in employment", violation thereof being punishable as a misdemeanor.

4. The arbitration provisions of §§ 13 and 13a of the act are not presently involved and need not be considered.

5. We have already set forth the pertinent provisions of the penalty clause of § 22. And § 22a read as follows:

> "Sec. 22a. The board, or any person, labor organization, firm or corporation may pursue any proper legal or equitable remedy or relief in any court of competent jurisdiction for any act or conduct in violation of any of the provisions of this act".[14]

6. Those sections directly involved in this litigation, *viz.*, 9, 9a, 9b, and the applicable penal clause of 22, had the common purpose of continuing and encouraging the mediation process during a prescribed period of 10 to 20 days.[15]

§ 9, as amended by Bonine-Tripp, mapped steps which should be taken before a strike or lockout: (1) a 10-day notice of a labor dispute and impending strike in ordinary circumstances, a 30-day notice in the event of such a dispute in an industry affected with a public interest, *e. g.*, a

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[14]

It should be noted that since the effective date of the 1949 amendatory statute, § 22a has ceased to operate upon or affect the appellants.

[15]

It is our position that all other related sections of the group, 9a to 9g, incl., if applicable, should be construed in the light of their immediate context.

public utility or hospital; and (2) upon receipt of such notice, active and good-faith participation in mediation "prior to the calling of an election as provided" in § 9a.

§ 9a, also added by Bonine-Tripp, provided that in the event the parties to such dispute were not able to agree among themselves, or that a solution and determination of their controversy could not be reached by mediation, then before a strike might be called an election should be held in accordance with the terms of the statute, and a strike should not be instituted unless "a majority of all employees in such bargaining unit . . . vote in favor of such action".[16]

§ 9b, so added, imposed upon both employees and employer the duty "to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by section 9 . . . are being taken or until a strike is authorized by an election held as provided in section 9a".[17]

Certain related sections of the group, some of which are stressed by counsel for appellants, *esp.*, § 9e, are summarized as follows:

§ 9c, likewise added to the act in 1947, provided in substance that whenever a jurisdictional dispute arose in regard to representation of employees in any bargaining unit, it should be the duty of each party to such dispute or its representative "to at once file with the board a statement

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[16]

No punishment was provided, however, for a person or organization who called a strike in face of a vote the majority of which failed to authorize such a step.

[17]

Since in this case no election was held, the final clause of this section is inapplicable.

of the claim of such party and at the same time serve a copy upon each interested party". Upon receipt thereof, it became the duty of the board, "if possible, to settle such dispute by mediation" and if that failed to call "an election of the employees in the unit involved, as such unit is herein provided, to determine such issue as provided in section 9a of this act. No strike shall take place or be put into effect pending the determination of such issue as herein provided".[18]

§ 9d, so added, provided for voluntary arbitration of such disputes, before a board created as provided in § 13 of the statute.[19]

§ 9e, added by Bonine-Tripp, contains provisions upon which great emphasis is placed by appellants' counsel. It read as follows:

> "Sec. 9e. The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: Provided, however, That if the group of employees involved in the dispute has been recognized by the employer or identified by cer-

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[18]

§ 22 provides punishment for one who calls or instigates a strike while mediation is pending as provided by § 9c, but not for any other failure to perform a duty prescribed therein.

[19]

This section would be unconstitutional under decision of the Michigan Supreme Court in Local 170, TWUA, CIO v. Genesee Circuit Judge, 322 Mich. 332.

tification, contract or past practice, as a unit for collective bargaining, the board shall adopt such unit".[20]

§ 9f, which made unlawful, mass picketing, threats, intimidation or coercion, is not involved in this litigation.

§ 9g, added in 1947 by Bonine-Tripp, provided that "whenever a vote is held . . . on the question of calling a strike, the board, if so requested by the employer or by the collective bargaining unit to be affected by the strike, shall cause to be either printed on the ballot or affixed thereto a copy or statement of the most recent offer submitted by the employer to the bargaining unit representing the employees in the course of collective bargaining negotiations between said employer and said unit".

4

Schedule of sections of Labor Management Relations Act, omitted from appellants' Appendix "B".

The following sections of the Labor Management Relations Act, 1947, omitted from appellants' Appendix "B", touch on the subject of State jurisdiction: § § 10 (a), 14 (a), 202 (c), 203 (b) and 303 (b). They are published as Appendix "C" at the back of this brief.

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[30]

It is our position that § 9e is not involved in this litigation; there was no jurisdictional dispute in the Chrysler matter, and appellants have always been recognized as the collective-bargaining representatives of the Chrysler Corporation.

Counter-Statement of Facts and Proceedings in the courts below.

We respectfully note the following inaccuracies and insufficiencies in appellants' statement of the proceedings and facts in the courts below:

1. The pleadings and issues drawn thereby.

(1) It is deemed important to note that appellants' amended and supplemental bill of complaint (39), filed in the trial court, drew in question the constitutional validity of § § 9, 9a, 9b, and 22 of the Michigan statute here involved, and did not challenge the validity of any other section of the act (39-46).[21]

(2) The right asserted by appellants in paragraph 7 of their bill of complaint (41) was "to urge strike action, instigate strikes, call strikes, and to request the aid of others in such strike projects, free from the coercive efforts of Secs. 9, 9a and 22 of Act 318 Public Acts of 1947, insofar as the said sections make unlawful and penalize the exercise of said rights *unless such strike is approved by a majority vote in the election* provided for in said statute, and this assertion of right and the need therefor applies to the existing dispute between the UAW members employees of the Chrysler Corporation, and also to prospective disputes between UAW members and employers in the State of Mich-

[21] It is especially noteworthy that the appellants in their bill of complaint, directed no attack upon § 9e of the act.

igan concerning the legitimate subjects of agreement between said employees and employers".[22] [Emphasis supplied].

(3) In paragraph 13 (43) of appellants' bill the issue of constitutional validity is confined to § 9 and § 9a, the strike-election provisions, and § 22, the penalty clause, the attack being directed to those sections only insofar as they subject "to criminal penalties persons who instigate a strike or who call or cause a strike to be placed in effect while an election is pending under said Section 9, and insofar as such election has application to a strike by reason of a dispute concerning wages or terms of employment in businesses not affected with a public interest not a public utility nor hospital". And it is alleged on four distinct grounds (43-44) that § 9a is unconstitutional.

Grounds (a), (b) and (c) invoke protection under the due process clause of the Fourteenth Amendment and the State Const. 1908, Art. 2, § 16, upon the major premise that the appellants are deprived by the statute of the right to strike "unless and until a majority in the collective bargaining unit, including those not associated with the plaintiffs, approve said strike", but as we have so often observed, the statute imposes no penalty in such circumstances (footnotes 11, 14, 16, 17, 18, 22).

On the final ground, (d), the premise of the argument is the same, *viz.*, that under Michigan law a strike is penalized unless approved by a majority vote in the collective bar-

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[22]

The italicized phrase in this paragraph indicates the error in the pleader's conclusion of law. The 1947 statute did not penalize the exercise of such rights "unless such strike is approved by a majority vote in such election"; and the only action so penalized was the call, or instigation of a strike pending such election. This cannot be too strongly emphasized in stating our position.

gaining unit, from which the conclusion is drawn that such a law impairs the rights of representation and of collective bargaining possessed by the UAW and its constituent locals pursuant to the National Labor Management Act, 1947, "in that it assumes to transfer these powers and rights to a majority in a collective bargaining unit in the state of Michigan, and empowers said majority to continue indefinitely a collective bargaining contract to maintain a condition of no such contract, or to approve terms of contract offered by an employer, contrary to the commerce clause of the United States Constitution," Art. I, § 8 (3). Once again, the pleader of such legal conclusions is uninformed.[23]

(4) Counsel for appellants, brief, p. 5, states that among other things the plaintiffs' bill alleged (43) "that defendants threatened to prosecute all persons instigating or causing a strike *prior to authorization by an election*". The record (43) does not quite bear out this broad assertion, for the appellants there allege (paragraph 12, p. 43):

> "The defendant . . . prosecuting attorney . . . threatens to prosecute all persons who in said county instigate a strike or who shall call or cause a strike to be placed in effect *while an election is pending* under Section 9 of Act No. 318 Michigan Public Acts 1947. [Emphasis added by us].
>
> The defendant . . . Attorney General of the State of Michigan, threatens to prosecute all persons who in said State of Michigan instigate a strike . . . *while an election is pending* under said Section 9 of Act No. 318 . . . ". [Emphasis is ours].

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[23] It is also to be noted, we think, that the constitutional validity of § 9c is not drawn in question.

(5) And finally it may be noted that the relief sought (45) by the plaintiffs [appellants] in their bill of complaint, was an injunction to restrain the prosecuting officials of the State [the defendants-appellees] from enforcing "by any criminal prosecution" the provisions of the sections involved.

2. Opinion and decree of trial court:

The opinion (66) of the trial judge seems to be based in part at least upon the erroneous assumption that the Bourne-Tripp Act of 1947 "declared unlawful [and penalized] strikes instituted without first securing approval by a majority of the employees in the State in the collective bargaining unit of the plant involved".[24]

And the decree (70-71) seems to be based upon the same faulty premise.

3. Opinion and judgment of Michigan Supreme Court:

It should be noted that the opinion of the Michigan Supreme Court (121-134), 325 Mich. 250, includes *dicta* to the effect that "it is not an unreasonable exercise of the State's police power to forbid resort to a strike *which is not approved by a majority of the employees involved*, and thereby protecting both the majority of the employees in the bargaining unit and the public". But the Court, in their opinion, do not undertake the distinct task of construing the language of the sections involved, nor do they pass upon

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[24]

That erroneous assumption was indulged prior to the 1949 amendment of the act in question, and upon review it was carried into the Supreme Court.

the limited range of the penal clause of § 22 as presently applicable to the appellants. Such *dicta* was not essential to decision, for several reasons to be discussed in our argument.[25]

The decision, as distinguished from the *dicta* of the Court, was that the prosecuting officers of the State could not be enjoined from instituting criminal proceedings against the appellants for violating the penal clause of § 22 of the Bonine-Tripp Act, which provided punishment only for those who should "call or cause a strike to be placed in effect, . . . while an election is *pending*", not *after* such an election had been held.

4. Concerning statements in brief for NLRB as amicus curiae

We respectfully suggest the following inaccuracies and insufficiencies in the "Statement" of counsel for the NLRB, and in their brief as *amicus curiae*:[26]

1. **Question Presented**: It is said that the Board's interest in this case is limited to the single question "whether the provisions of the National Labor Relations Act, preclude Michigan from prohibiting the calling of strikes incident to lawful collective bargaining demands unless a prescribed procedure for mediation is followed and unless

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[25]

Among them, that since the appellants called the strike while an election was pending, and since such an election was never held, they could not in any event be prosecuted for calling a strike after an election had failed to give them a majority.

[26]

We did not receive a copy of the brief for NLRB until March 14th, and then only in typewritten form.

a majority of the employees in a state defined bargaining unit authorize such strike in a State conducted secret ballot election".

We prefer to state the question as we do below under the head "Questions Presented", noting at this point that no prescribed "procedure for mediation" was drawn in question by the appellants in the courts below, for there the only challenge was the penalty clause as applied to the strike-election proceedings. Nor should this Court consider the validity of the "majority provisions" of the act, for violation of which no penalty was prescribed.

2. Union-Management Contract: There are several errors in the following allegations found in the first paragraph of counsel's "Statement", p. 3 of typewritten brief:

> "The contract involved in the case at bar was entered into on April 26, 1947, and was terminable at the option of either party on April 26, 1948 (R. 14, 80, 115-116)".

The contract, under its terms (115-116) was to continue "in full force and effect until April 26, 1949, and from year to year *thereafter* unless between April 1 and April 15 of any year *thereafter* (emphasis ours), the Corporation notifies the Union, or the Union notifies the Corporation, of its desire to terminate the agreement, and thereupon the agreement shall terminate as of April 26 of the year in which the notice is given". Counsel are therefore mistaken when they say that the contract was terminable April 26, 1948.[27]

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[27] The courts below were not asked to interpret the terms of the Union-Corporation contract. As we construe them, the agreement could not be terminated until April 1949, a year after the dispute arose.

Counsel continue:

> "In February, 1948, a dispute arose between the Union and the Company concerning amendment of the wage provision of the contract, and during that month the Union pursuant to Section 8 (d) of the National Act gave notice to the Company of its intention to *terminate* (emphasis supplied) the contract unless agreement was reached concerning the wage issue in dispute (R. 8-9)".

Assuming, as we must, that the Union at all times complied with the terms of its agreement (Ex. 4, 80) with the Corporation, it is incorrect to say that during February 1948 "the Union pursuant to Section 8 (d) of the National Act gave notice to the Company of its intention to terminate the contract unless agreement was reached concerning the wage issue in dispute".

For it is important to note that the 1948 negotiations were proceeding in accordance with the following express terms of such contract (115-116):

> "(116) During the term of this agreement the rates for all existing classifications are fixed except that each party may on one occasion only, and upon written notice to the other, signify its desire to open wage rate negotiations, in which event the notice shall set forth the adjustment or adjustments desired".[28]

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[28] It will be our position in argument, that the language of § 8 (d) of the Labor Management Relations Act, 1947, does not apply to such interim bargaining. See report of Committee on S. 1126.

Moreover, the secretary-treasurer of the Union, testified (8):

"There was a dispute between the members of the U.A.W. and the Chrysler Corporation, concerning the establishment of a proper scale of wages. The dispute arose about the middle of February, under the terms of our contract to give the corporation notification of our intention to amend the wage agreement we had, and we notified the corporation about the middle of February of our intention to amend our wage provisions of the agreement". [29]

[29]

The notice to which this witness referred (8), cannot be found in the record as an exhibit. At least we cannot find it.

IV

Questions Presented

We cannot accept all the premises of the "Questions Presented" by counsel for appellants, brief, p. 4, the first of which is set forth as follows:

> 1. Whether the provisions of the Michigan statute prohibiting the calling of a strike for higher wages in an industry affecting commerce unless and until a majority of all employees in the collective bargaining unit as designated by the State Mediation Board have so voted in a state-conducted election invades the field which Congress has occupied by the Labor-Management Relations Act, 1947?

Our suggestion is that the question might be rephrased thus:

> 1. Whether the provision of § 22 of the Michigan statute which in 1948 penalized the calling of a strike while a state-conducted election directed to be held as provided in § 9a of the act, was pending, as applied to an industry affecting commerce, during wage-rate-classification negotiations opened upon notice from the Union recognized by the employer as representative of the employees, of its desire so to negotiate according to the terms of a subsisting agreement (Ex. 4, R. p. 116), invades the field which Congress has occupied by the Labor Management Relations Act, 1947?

V

Preliminary Considerations

1. Interest of State in this litigation:—Michigan's purpose is not to seek judicial curtailment of the lawful rights of organized labor, guaranteed by the Federal Constitution and the Taft-Hartley Act, or to champion the cause of Management as opposed to Labor, or to advocate any legislative policy; nor is she interested primarily in obtaining judicial leave to exact penalties prescribed in § 22 of the statute for commission of a misdemeanor.[30]

Counsel for the State are here to maintain Michigan's right through her legislature within constitutional limitations set by the commerce clause, and without any desire to "occupy that field" [if metaphor must be employed], to exercise those inherent police powers which are so essential for the protection of the peace, health, safety and welfare of Michigan's inhabitants,—a sovereign right now seriously challenged by a Federal Authority acting under and by virtue of an Act of the Congress the valid purpose of which is to protect "the flow of commerce".[31]

2. Presumptions to be entertained: We express the hope that the Court, in approaching the ever-difficult task of

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[30]

Such penalty clause, one should always remember, is the center of this controversy.

[31]

Counsel for NLRB conscientiously wish to extend that Board's jurisdiction to the farthest reaches of the Taft-Hartley Law, and feel obligated to assert it over all matters technically within reach. Please see The Law Society Journal, Feb. 1949, p. 145, esp. note (38), article, Local Business-No Man's Land in Labor Relations, by Edward L. Schwartz.

adjustment between conflicting Federal and State interests, will be hospitable to those strong presumptions which favor the constitutional validity of State Laws, keeping in mind the constitutional purpose of each statute presently involved, both State and Federal: that "the State may punish * * * for the safety and welfare of its inhabitants; the Nation may punish for the safety and welfare of interstate commerce".[32]

VI

Summary of the Argument

First:

Narrow range of judicial inquiry:

This appeal involves no more than the constitutional questions which arose from the threat of prosecuting officers to exact the penalties prescribed in the 1947 version of the Michigan statute, § 22, for one who in 1948 called or instigated a strike while a state-conducted election, directed to be held as provided in § 9a thereof, was pending.

1. The only threat made by state officials was to prosecute all persons who "instigate a strike or who shall call or cause a strike to be placed in effect while an election is pending under said Section 9 of Act No. 318 Michigan Public Acts 1947" (43).

2. The appellants did not violate the "majority rule" promulgated in § 9a of the act; and § 22 of the statute

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[32] California v. Zook, 336 U.S. 725, 738.

prescribed no penalty for calling a strike *after* an election had been held, even though a majority voted against such a step.

3. The "majority rule" phase of the question presented by appellants, is therefore moot; and this Court should be reluctant to entertain it. [33]

4. This Court is also reluctant to decide moot questions or to give advisory opinions which cannot affect the rights of litigants in the case before it;[34] or to pass upon the complaint of one who fails to show that he is injured by the operation of a State statute which he attacks on constitutional grounds, or until it is necessary to decide such questions in order to preserve the rights of the parties;[35] or to decide abstract, hypothetical or contingent questions; or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied; or to decide any constitutional question except with reference to the particular facts to which it is to be applied.[36] The "majority rule question", presented by appellants, if considered, would do all of this.

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[33] Heithmuller v. Stokes, 256 U.S. 359.

[34] St. Pierre v. United States, 319 U.S. 41, 42.

[35] Coffman v. Breeze Corporation, 323 U.S. 316, 325.

[36] Federation of Labor v. McAdory, 325 U.S. 450, 461.

Second:

Claimed invasion of federal field of regulation:

It might be helpful, when considering the problem, to recall those principles and rules which this Court has evolved over the years for guidance in construing statutes enacted by the Congress in exertion of its power to regulate commerce among the States.

It should never be held that Congress intends to supersede or suspend the exercise of reserved powers of the States, even where that may be done, "unless and except so far as its purpose to do so is clearly manifested".[37] No constitutional rule compels Congress to occupy the whole field, for when regulating commerce, or any business whose operation affects commerce, it may occupy only a limited section thereof; and when this is done, state regulation outside that limited field, and otherwise admissible, is not forbidden or displaced.[38] Indeed, it might be said, that without such judicial restraint, the commerce clause, through lax construction of congressional enactments, might long ago have strangled State sovereignty to death.

This Michigan police measure enacted to protect the public peace, health, safety and welfare, occupied a section

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[37]

Allen-Bradley Local v. Board, 315 U.S. 740, 745; — Illinois Central R.R. Co. v. SPUC of Illinois, 245 U.S. 493, 510.

[38]

Kelly v. Washington, 302 U.S. 1, 9, 10, holding that exercise by the State of its police power is superseded only where the repugnance or conflict is so direct and positive that the two acts cannot "be reconciled or consistently stand together".

of the field of labor-management regulation into which Taft-Hartley did not enter. Congress evinced no intent to occupy the *entire* field of such regulation by passing the LMRA, 1947;[39] much less did it evince such a purpose by rejecting a strike-vote requirement resembling that contained in the Michigan statute.

A. *Specif.*, the Michigan statute did not invade the field of regulation occupied by the Congress in any section of LMRA enumerated in appellant's brief, p. 10, *viz.*, §§ 8 (b), (4), 8 (d) or 303. Nor do the national emergency provisions of §§ 209-210 supply the analogy suggested by counsel.[40]

B. We find it impossible, moreover, to accept appellants' dog-in-manger philosophy which would exclude state regulation of the same subject because Congress finally rejected strike-election provisions of the House Bill.[41]

C. While this Court's opinion in *International Union, UAW, v. Wisconsin Board*, 336 U.S. 245, did not fully determine the precise question here presented, the court

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[39]

To say that one has entered a field does not, as appellants seem to think, mean that he occupies the whole farm.

[40]

Like the national emergency sections of Taft-Hartley, the Michigan statute imposes no penalties for calling a strike after such a vote it taken, but constitutes public opinion as the court of last resort.

[41]

We shall have occasion to refer to legislative history, as do counsel in this connection. Please see Argument.

below was justified in considering it applicable to the case at bar.[42]

D. Furthermore, Taft-Hartley contains several sections evincing congressional intent to leave to the states a reasonable residue of sovereign power to preserve the peace, health, safety and welfare of their citizens, and to save them from the dire consequences of economic collapses attendant upon management-labor controversy.[43]

E. And finally, it does seem reasonable to suppose that two such authorities, the one created by the Congress, the other by a state legislature, can work in harmony together without invading forbidden territory.

Third:

Claim that Michigan statute clashes with LMRA at its very roots:

Counsel contend, brief, summary of argument, p. 12, that the Michigan statute clashes with the National Act at its very roots, and they intimate, brief, pp. 27-38, that the Michigan statute interferes with appellants' Taft-Hartley-given right to conduct collective bargaining as authorized representatives of Chrysler employees, Union members within the bargaining unit of industrial plants located in Michigan, Indiana and California.

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[42]

The court below merely said, 325 Mich. 256, that this recent decision of this Court "is informative in the field of law pertinent to the instant case", not that it controlled the question.

[43]

Please see Appendix C, and § 13 of the Taft-Hartley Act.

There are, we think, several rather short answers to this and other contentions of like nature found in subdivisions A, B and C, summary of argument, brief, pp. 12-13.

1. The "roots" of LMRA, aside from those provisions to which sound objections have been made by friends of organized labor,[44] are entwined about guarantees of the right to bargain collectively through chosen representatives; indeed the entire act, aside from its many objectionable features, might be designated as a "collective-bargaining statute", and any interference with that right by State legislation, would be out of bounds.

The Michigan statute, on the other hand, recognizes the right to bargain collectively (§ 8) and does not presume to regulate Labor's choice of bargaining representatives.[45]

The Bethlehem[46] and La Crosse[47] cases may be distinguished on the ground that each involved administrative determination or certification of collective bargaining representatives. Such a situation is not present in this cause.

B. Counsel point out, brief, p. 12, that under § 8(d) of the LMRA "a party to a collective bargaining agreement desiring to terminate or modify that agreement must notify

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[44]

This is the first time to our knowledge that counsel representing Labor have interpreted LMRA as a charter of liberty.

[45]

Section 9e of the Michigan statute merely designates the unit within which arbitration may be held, § 9d, or an election may be conducted. It has nothing to do with bargaining representation.

[46]

Bethlehem Steel Co. v. N.Y. State Labor Relations Board, 330 U.S. 767.

[47]

La Crosse Tel. Corp. v. Wisconsin Board, 336 U.S. 18.

the other party 60 days in advance, must notify the federal and state conciliation agencies 30 days in advance and must continue in effect without strike or lockout the terms of the existing agreement".

But the Michigan statute, as here applied, did not clash with the foregoing provisions of Taft-Hartley, for in this particular case the bargaining was conducted under the terms of an existing contract and the Union did not seek to terminate it. In such circumstances, we respectfully submit, § 8(d) of the LMRA does not apply.

C. Contrary to appellants' fears, brief, p. 13, the Michigan statute does not interfere with their right to strike as guaranteed by Taft-Hartley.

Fourth:

Claimed violation of due process

We cannot, of course, agree with counsel's conclusion, brief, p. 13, that the Michigan statute violates the due process clause of the Fourteenth Amendment. And we respectfully submit, as we shall urge in argument, that the Bonine-Tripp Act constituted a valid and reasonable exercise of the police power.

VII

The Argument

Point One

Settled practice of this court narrows the issues in the pending review.

When this court passes upon the constitutional life-span of a state statute enacted in exertion of the police power, the range of judicial inquiry is short and in times past has been confined to realities.

As Mr. Chief Justice Stone put it:

> "In any case, the Court will not pass upon the constitutionality of legislation in a suit which is not adversary, . . . or upon the complaint of one who fails to show that he is injured by its operation, or until it is necessary to do so to preserve the rights of the parties".
>
> *Coffman v. Breeze Corporations*, 323 U.S. 316, 324.

> "This Court is without power to give advisory opinions. . . . It has long been its considered practice not to decide abstract, hypothetical or contingent questions, . . . or to decide any constitutional question in advance of the necessity for its decision, . . . or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied, . . . or to decide any constitutional question except with reference to the particular facts to which it is to be applied".
>
> *Federation of Labor v. McAdory*, 325 U.S. 450, 461.

Please see, also, authorities cited in notes 33 and 34, *ante*, as well as the following:

> *Kimball v. Kimball*, 174 U.S. 158, 161, holding the Court is not empowered to decide moot cases or abstract propositions, or to declare for the government of future cases, principles or rules which cannot affect the result as to the thing in issue in the case before it;
>
> *Chicago Bd. of Trade v. Olsen*, 262 U.S. 1, 43, holding a plaintiff cannot invoke this Court's decision as to validity of an act of Congress until in danger of suffering prejudice;
>
> *Near v. Minnesota*, 283 U.S. 697, 708, holding that in passing upon the constitutional validity of a statute, the law must be tested by its operation and effect.

And in *Heitmuller v. Stokes*, 256 U.S. 359, the Court had occasion to say:

> "The duty of this Court . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it".

It is not our position that the case at bar has become moot, or that the questions involved are wholly abstract—far from it. What we are trying to say is that insofar as we are concerned with the "majority rule" set up by § 9a of the Michigan statute, the appellants have failed clearly and plainly to show that they will suffer prejudice or injury or harm as the result of the decision of the court below

except as such decision subjects them to the penalty prescribed by § 22 of the act for any person who calls or instigates a strike "while an election is pending".

Point Two

The Michigan statute did not invade a field which Congress has occupied through the Labor Management Relations Act, 1947.[48]

Counsel for appellants urge that the Congress when enacting LMRA evinced its intention to occupy the field of governmental regulation of strikes in industries affecting commerce, (1) by enacting specific provisions dealing with strikes in such industries, and (2) by expressly rejecting the strike-vote provision of the Hartley Bill which Michigan has enacted.[49]

As pointed out in our summary of the argument, there are certain presumptions and rules of construction to be observed in solving this important question, and before striking down a statute because in conflict with an act of the Congress, this Court requires strong manifestation of congressional intent to supersede or suspend the exercise of state reserved powers.

> "In construing federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exer-

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[48]

Appellants' brief, pp. 14-27.

[49]

H.R. 3020, as passed by House, § 101, Sec. 2 (B), p. 7; Legislative History LMRA 1947, pp. 164-166.

cise of the reserved powers of a State, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested".

Ill: Cent. R.R. v. Public Utilities Commission, 245 U.S. 493, 510.

"And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible, is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together'".

Kelly v. Washington, 302 U.S. 1, 10.

Our position is that the act of Congress, when placed side by side with the Michigan statute for comparison, should be liberally construed to serve its *primary* purpose to protect the "flow of commerce"; the Michigan statute should if possible be liberally construed to preserve a reasonable exertion of the State's power to protect her public welfare as the *primary* purpose of such a legislative measure; and each should be so interpreted as to preserve harmony and accord between federal and state authorities. On the other hand, each enactment, state or federal, should be strictly and narrowly interpreted with respect to any *secondary* object it is designed to carry out.

So tested, if the statute of the State has as its ulterior purpose the regulation of interstate commerce, or the obstruction of the flow of such commerce "by any indirection", it deserves destruction at the hands of this Court.

By the same standards of judicial appraisal, if LMRA, under the guise of commerce protection, has as its secondary object an entry into the field of state police regulation, it should be stopped at the boundary line; otherwise it might be deemed unconstitutional; and this Court will if possible so construe a statute as to accord it constitutional validity.[50]

A

Congressional enactment of specific provisions dealing with strikes in such industries, evinces no intent to bar the States from exercise of police power.[51]

1. It is said, brief, p. 17, that Congress carefully listed certain types of strikes and made them unfair labor practices, and counsel cite several examples of outlawed strike objectives, § 8 (b) (4) LMRA.

The Michigan statute, while forbidding and penalizing certain definite acts of intimidation and coercion,[52] unlike Taft-Hartley, proscribes no strike objectives, and basically that law has as its main purpose the mediation of labor

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[50]

American Power & Light Co. v. SEC, 329 U.S. 90;
Ex Parte Mitsuye Endo, 323 U.S. 283.

[51]

Appellant's brief, pp. 14-27.

[52]

See Michigan Statute, § § 9f, 15, 16, 17, 22.

disputes, the continuance of that process for as long a period of time as possible, and the protection of the public from the disorders which attend labor disputes and strikes. Strikes are not forbidden as such, and, as we shall presently observe, the object of the strike-election-majority rule is to discourage strife which arises from minority strikes.[53]

2. Counsel place strong emphasis upon the provisions of § 8 (d) of the Taft-Hartley Act under the terms of which no strike to terminate or modify a collective bargaining agreement is permissible in the absence of a 60-day notice to the other party, 30-day notices to federal and state mediation agencies,[54] and bona fide negotiations in the intervening period. And counsel note, brief, p. 18, "in addition to making the failure to follow these procedural steps unfair labor practices, ... striking employees in such circumstances lose status as employees and the right to reinstatement". [55]

That section, however, did not apply to the existing situation which confronted management and labor when collective-bargaining negotiations were conducted between appellants and the Chrysler corporation in February through May 1948.

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[53]

To be realistic, it should be noted that under Labor's present statesmanlike leadership, strikes are not called unless backed by the majority of employees.

[54]

It is important to observe that state conciliation services are here recognized.

[55]

Such a law is much harsher than the Michigan statute here challenged as depriving labor of its rights without due process of law.

Section 8 (d) provides that where a collective bargaining contract is in effect, a notice to terminate or modify it must be given 60 days "prior to the expiration date thereof" [our emphasis], or in the event such contract contains no expiration date, 60 days prior to the time "it is proposed to make such termination or modification"; furthermore, there must be no strike "for a period of 60 days after such notice is given".

Thus, where a contract has an expiration date, only one type of notice is required by the Federal Act, *viz.* a notice to be given 60 days before such expiration date.

The Chrysler-UAW contract (80-116) had an expiration date; it was executed April 26, 1947, and under its express provisions was to continue in effect at least until April 26, 1949; the strike occurred May 12, 1948.

As heretofore noted, that contract provided (115-116) for notice by either party of desire to amend its terms; it also provided (116) that during the term of such agreement either party might on one occasion only, and upon written notice, signify its desire "to open wage negotiations", and the negotiations which were proceeding when this controversy arose, in 1948, were pursuant to the foregoing conditions of a subsisting contract and strictly in accordance with its provisions. The bargaining was, therefore, what is commonly called "interim bargaining". And § 8 (d) did not apply.

That Congress had in mind making the 60-day notice applicable only when new contracts were being negotiated appears from the "Report of the Committee of Labor and Public Welfare on S. 1126", where it was said in part, p. 24, Legislative History LMRA, p. 430:

"Most agreements have an expiration date, with an automatic renewal clause in the absence of advance notice by either side of a desire to terminate or modify. Under this section, parties to collective agreements in the future would be required to give 60 days' notice in advance of the terminal date, if they desire to terminate or amend".

The argument of counsel on this point, therefore, falls with its premises.

Even though by some stretch of the imagination it might be said that § 8 (d) applied, Congress did not provide therein that *all* strikes after 60 days would be legal, or that there is an automatic right ~~to strike after expiration of the prescribed period right~~ after expiration of the prescribed period, to call or instigate a strike forbidden by a state law,[56] provided, of course, such a law is otherwise valid.

3. The fact that Congress provided for strike ballots only in national emergencies clearly indicates that it did not intend to interfere with the right of the States to provide in appropriate cases for strike ballots in labor disputes not determined to constitute national emergencies. Indeed it might well be said that each legislative authority, federal and state, has kept well within its own peculiar field, national and local.

Counsel's argument loses sight of the "well-established principle that Congress may circumscribe its regulation and occupy a limited field, and that the intent to supersede the exercise by the State of its police power as to matters not

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[56]

NLRB v. Fansteel Metallurgical Corp., 306 U.S. 240;

Southern Steamship Corp. v. NLRB, 316 U.S. 31;

Gibonev v. Empire Storage Co., 336 U.S. 490.

covered by the federal legislation is not to be implied unless the latter fairly interpreted is in actual conflict with state law".

Townsend v. Yeomans, 301 U.S. 441, 454;

Kelly v. Washington, supra, 302 U.S. 1, 10.

In other words, it does seem more logical, at least to us, to conclude that Congress having seen fit to legislate on only one phase of the matter did not intend to occupy the whole field.

B

Rejection by Congress of strike-vote provisions similar to those enacted by Michigan, evinced no intent to bar state legislation on the subject.

In the history of legislation which found final expression in LMRA, H.R. 3020, as reported to the House Committee on Education and Labor, in addition to stating that the NLRB must provide a strike election where a strike election is threatened imperiling public health and safety (§ 203), required that where no agreement was in effect providing for adjusting or settling of disputes, and the parties did not settle, a strike vote must be conducted by the Board "on the question whether such employees desire to reject the employer's last offer of settlement and to strike" (§ [B] of § 101).

The Bill as reported by the Senate Committee on Labor and Public Welfare (S. 1126) confined strike elections to national emergency disputes (§ 207 [b]).

The Joint Conference Committee Report refers to the foregoing strike election provision of H.R. 3020 without

comment, House Report 510, Report of the Joint Conference of the House and Senate on H.R. 3020, p. 34.

The final result was enacted into law was the Senate Bill which did not provide for such elections.

It is argued here in effect that Congress having thus considered and rejected strike-elections, it thereby, and through expression of opinion on the subject, declared the public policy of the United States to be that strike elections should *not* be held.

The answer is that "consideration" by Congress without affirmative action is not the rule of thumb announced by this Court in determining whether Congress has preempted the field, and, second, if such a rule were followed, Congress could by refusal to act, and without more, take from the States their inherent power over police regulation.

Had Congress so intended in the instant case to take such police power from the States, it could have made its purpose manifest with drastic clarity.

> *Algoma Plywood & Veneer Co. v. Wisconsin Board*, 336 U.S. 301, 306.

We respectfully submit that, one of the Houses of Congress having recommended Federal legislation requiring a strike vote, and the Senate having confined the strike vote to cases of national emergency, and both Houses having adopted the Senate Bill, confining such legislation to national emergencies, Congress intended to without such power from the NLRB and let it rest in the States, where it would normally reside in the absence of clear federal preemption.

C

The International Union Case Supports the decision below.

We feel that the Supreme Court of Michigan has in its opinion, 325 Mich. 256-259, so carefully analyzed the case of *International Union v. Wisconsin Board*, 336 U.S. 245, that little more need here be said. In that opinion, however, the court applied the decision in *International* to the question of due process and freedom of speech. And we think the court was absolutely correct in reaching the following conclusion:

> "Further, it is difficult, if not impossible, to read the decision in the *Wisconsin Case* hereintofore noted without coming to the conclusion that in the exercise of its police power a State may by regulation regulate the right of employees to strike, providing such regulations are not in conflict with or inconsistent with Federal regulations".

In the *International Case*, *supra*, this Court applied the clear-manifestation-rule enunciated in *Allen-Bradley Local v. Wisconsin Board*, 315 U.S. 740, 750, and in the case at bar, we respectfully submit, Congress has not clearly manifested its intent to exclude the States from the field here in question. The mere fact that in *International*, sporadic work stoppages were involved, was not in our opinion the determining factor, though counsel in their zeal make much of that situation.

Point Two

The Michigan statute, a State police measure designed to protect the general public as the forgotten party to such disputes, by discouraging minority strikes, does not conflict with LMRA, a collective bargaining law designed to protect the flow of commerce.

Point Three

Such a State police measure so designed, does no violence to the due process clause of the Fourteenth Amendment.

These two questions are, in our mind, inextricable, we choose to consider them together.

First: Appellants contend, brief, pp. 27-38, that the Michigan statute clashes with the National Act "at its very roots", thus defeating the basic purpose of Taft-Hartley, *viz.*, "the encouragement of collective bargaining"; under the Act, their argument runs, employees are accorded the right to organize and "bargain collectively through representatives of their own choosing"; the LMRA sets up procedures for determining the representatives of the employees' choosing "and requires that the employer deal with these representatives and no others so long as they remain the representatives in good standing".[57]

The gravamen of appellants' charge against the Michigan statute is that by requiring a strike vote on the employer's last offer,

> "the State of Michigan is in effect assuming the power to nullify the Congressionally-conferred authority of the chosen representatives of the employees to act on behalf of the employees and reject the employer's last

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[57] J. I. Case Co. v. National Labor Relations Board, 321 U.S. 332.

offer. The State of Michigan is thus interfering with collective bargaining through representatives chosen by the employees just as much as if it adopted additional qualifications for those representatives not prescribed by Congress". Brief, p. 28.

In short, it is urged, the Michigan statute challenges the authority of the representatives of the employees to act on their behalf; hence the local law clashes with the National Act.

And, finally, it is said that such clash comes at three vital points: (1) the bargaining unit under state law is different from the "bargaining unit" under the National Act; (2) the State Act requires delays in the collective bargaining process in conflict with the National Act; and (3) the State Act conflicts with the right to strike protected by the National Act.

We agree, of course, that the LMRA is basically a collective bargaining statute designed to protect that right as a means of relieving interstate commerce of the burdens placed upon such commerce by labor-management disputes.

The Michigan statute, on the other hand, is essentially a police regulation the purpose of which is to protect its citizens from the consequences of such disorders. It does not pretend to regulate or otherwise restrict collective bargaining; indeed it fully recognized that right, § 8. But it sets up no machinery in furtherance of such bargaining, and it defines no "unfair labor practice" within that field.

Second: Appellants contend that the Michigan statute imposes unconstitutional restraints upon the appellants' right to strike [acknowledged to be qualified] and upon their rights by speech and assembly to "instigate" or "call" or "cause" a concerted peaceful refusal to work to secure lawful demands; the right of workers to strike

peacefully and for lawful purposes is said to be "a fundamental one, like their rights to speak and to assemble; that state action placing restraints upon the exercise of those rights must, if it is to be valid, be narrowly drawn to meet important public interests entitled to such protection; therefore, counsel conclude, the Michigan statute fails to meet this test.

Both propositions, first and second, carried to their logical conclusion, and baldly stated, would amount to this:

1. The Taft-Hartley law was enacted primarily to protect the rights of one group of citizens; it set up no machinery to regulate *minority* strikes or to protect the general public from the consequences of such strikes; it provided for no election to determine whether a strike should be called, save where a National Emergency may arise; it provided a cooling-off period only in those cases where management or labor or both desire to negotiate a new contract to replace an existing agreement between them; and it protected the workers in their lawful right to bargain collectively by utilizing as a means of lawful coercion, a continuing threat of strike.[58] By rejecting a strike-vote-election plan, Congress expressed an intent to encourage minority strikes regardless of the consequences to the general public or the majority of employees in any particular unit, and to keep the States out of that field of regulation.

2. Even in the absence of such a clash of authority, federal and state, a State violates the due process clause whenever it undertakes to discourage, delay or regulate a minority strike, for under our constitutional system, the rights of such a minority must prevail even though the majority must suffer.

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[58]

Such a bargaining process is, of course, legitimate, and we do not question its validity. Thornhill v. Alabama, 310 U.S. 88, 103.

1

No clash of Authority here.

A. Bargaining Unit: The Michigan statute as it stood in 1948, did not expressly or impliedly regulate or attempt to regulate the bargaining process between employer and employee, but it left Labor free to choose its own representatives for that purpose, and it recognized the "rights of Labor" in all legitimate respects.

Thus, the law provided, § 8:

> "Sec. 8. It shall be lawful for employees to organize together or to form, join or assist in labor organization, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their employers through representatives of their own free choice".

And, § 13,

> "Nothing in this act shall be construed to require an employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment. No court shall have power to issue any process to compel any such employee to continue to render such labor or to remain at his place of employment without his consent".

Section 16 made it

> "unlawful for an employer to initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization: to discriminate

in regard to hire, terms or other conditions of employment in order to discourage membership in any labor organization; or to encourage membership in, or initiate, create, dominate, or contribute to a company union; or to discriminate against an employee because he has given testimony before the board or commission. Violation of this section shall be a misdemeanor and punishable as such".

The statute, as it stood in 1948, at the time of conflict, made no provision for the choice of representatives of Unions in collective bargaining.

Section 9e, of course, provided for "bargaining units", but its purpose was undoubtedly to determine the units or plants in which the election provided in § 9a should be held, and to determine the units in which arbitration should occur under § 9d.

Moreover, the appellants have always been recognized by Chrysler and by the Michigan mediation authority as well, as the bargaining representatives of the Chrysler employees, under the proviso of § 9e.

That fact removes from the controversy any conflict in the choice of bargaining representatives, and it makes the *Bethlehem* and *La Crosse* cases inapplicable; there are present here no "very real potentials of conflict", 336 U.S. at 26.

Much is made of the fact that Chrysler owns and operates industrial plants in Michigan, Indiana and California; that commerce flows between them; and that NLRB by virtue of an order in an adversary proceeding certified this Union as the bargaining representative of employees in all plants within this Tri-State area.

Does this mean [to pose a rhetorical question] that Michigan's citizens thus lose protection from the consequences of minority strikes? Or that the State of Michigan, by virtue of necessity for uniformity, loses the power to protect her inhabitants from economic disaster, unemployment, clashes between contending factions in strife-ridden automobile plants, and all the concomitant evils which follow a minority strike?

B. Right to strike: Michigan's statute does not interterfere with the "right to strike" guaranteed by the National Act.

In the first place, § § 9, 9a and 22 of the Bonine-Tripp Act, as it stood in 1948, before amendment, penalized the calling of a strike "pending an election"; it did not penalize those who called or instigated a strike after such an election had been held.

The net result was that the calling of a strike in Michigan might be delayed for a matter of 10 or 20 days while a strike-vote was being taken. After such a strike vote had been taken, a strike could be called with impunity even though a minority voted for it. The only consequence which such a Union could suffer would be the wrath of public opinion, if sufficiently aroused.

Moreover, there is nothing we can find in the LMRA which curtails or regulates or postpones during a cooling-off period, a *minority* strike; and that field of regulation is left vacant.

2

No denial of due process.

The appellants claim that the strike-vote-election provision of the Michigan Act violates the due process clause of the Fourteenth Amendment by placing prior restraint on their right of free speech, free assembly, and free collective bargaining. But all rights are subject to reasonable regulation, and that is the only question here.

The short answer, of course, is that the Michigan statute places no check on free speech or assembly; it does not forbid Union officials or members of the labor organization to cease their advocacy of a strike or to persuade the employees to vote for a strike, and no one in a democracy can complain of this method of determining action of any kind.

Moreover, a minority strike-vote, when taken, does not end the matter, for there is no provision in the act, couched in mandatory terms, forbidding the advocacy of a strike, or the calling of a strike *after* such a vote has been taken.

All that the law of a sovereign State asks Labor to surrender for the welfare of the general public of Michigan, is the calling of a strike pending such an election.[59]

In *International Union v. Wisconsin employment Relations Board*, 336 U.S. 245, the same argument as to free speech and free assembly was advanced. This Court held that it was within the power of the State of Wisconsin,

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[59]

But appellants in this case did not await the results of an election to be held, and they have failed to show any injury other than the penalty incurred under § 22; as Mr. Justice Cardozo once said, 208 U.S. at 341, "To adopt a homely form of words, the complainants have been crying before they are really hurt".

under the Employment Peace Act of that State, to prohibit "work stoppages" by means of Union meetings called at irregular times during working hours, and said of the claim, 336 U.S. at 251:

> "It is further contended that the statute as applied invades the rights of free speech and public assemblage . . . We recently considered a similar contention in connection with other state action concerning labor relations. *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, . . . 335 U.S. 525, and *American Federation of Labor v. American Sash & Door Co.*, 335 U.S. 538. For reasons there stated, these contentions are without merit".

The decisions cited in this Court's opinion were handed down in what have come to be known as "Right-to-Work" cases, each sustaining a statute or Constitution protecting the right-to-work.

While Michigan's strike-vote-election law is not precisely like those of Arizona and Nebraska, nevertheless one of its underlying purposes is to protect the "right to work" in the face of an impending strike called by a minority.

We therefore respectfully submit that it constitutes a reasonable [not arbitrary] exercise of the police power of a State to protect by legislation such as this Court now has before it, the right of a majority of employees in an industrial plant, to continue to work although a minority of Union members has called a strike, to protect the general public from the evil effects of discord which follow in the wake of a minority strike, and to protect the inhabitants of the State from the dire results of unemployment. To us the subject does not seem to be debatable.

VIII

Conclusion.

It is respectfully submitted that the Michigan statute (a) does not invade a field which Congress has occupied, (b) does not conflict with the National Act, and (c) does not violate the due process clause of the Fourteenth Amendment. The judgment of the court below should be affirmed.

Respectfully submitted.

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Counsel for Appellees

APPENDIX "A"

Copy of Michigan Labor Mediation Law as amended by Bonine-Tripp Act of 1947 and as it stood when this controversy arose.[1]

Act 176, 1939, p. 336; Imd. Eff. June 8.

AN ACT to create a board for the mediation of labor disputes, and to prescribe its powers and duties; to provide for the mediation and arbitration of labor disputes, and the holding of elections thereon; to provide for the creation of arbitration boards; to regulate the conduct of parties to labor disputes and to require the parties to follow certain procedures; to regulate and limit the right to strike and picket; to protect the rights and privileges of employees, including the right to organize and engage to lawful concerted activities; to protect the rights and privileges of employers; to make certain acts unlawful; to prescribe penalites for violations of the provisions of this act; and to repeal sections 8616 to 8628, inclusive, of the Compiled Laws of 1929, and all other acts or parts of acts inconsistent with the provisions of this act.

The People of the State of Michigan enact:

423.1 Declaration of policy.

Sec. 1. It is hereby declared as the public policy of this state that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial

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[1] We copy the version set forth in Michigan Compiled Laws of 1948, §§ 423.1-423.22a. Bold-face catch-lines are those of the compiler.

strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the state.

HISTORY: Title Am. 1947, p. 524, Act. 318; Eff. Oct. 11.

423.2 Definitions.

Sec. 2. When used in this act, unless the language or context indicates otherwise:

(a). The term "company union" includes any employe association, committee, agency or representation plan, formed or existing for the purpose, in whole or in part, of dealing with employers concerning grievances or terms and conditions of employment, which in any manner or to any extent, and by any form of participation, interference or assistance, financial or otherwise, either in its organization, operation or administration, is dominated or controlled, sponsored or supervised, maintained, directed, or financed by the employer;

(b). The terms "dispute" and "labor dispute" shall include but are not restricted to any controversy between employers and employes or their representatives as above defined, concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining or changing terms or conditions of employment;

(c). The term "board" means the labor mediation board created by section 3 of this act;

(d). The term "commission" means any special commission appointed by the governor under the provisions of this act.

423.3 Labor mediation board; qualifications of members, terms.

Sec. 3. There is hereby created a state board to be known as the labor mediation board, which shall consist of 3 members appointed by the governor, with the advice and consent of the senate. Each member shall be a citizen of the United States and a resident of the state of Michigan, and shall have been a qualified elector in the state for a period of at least 5 years next preceding appointment. In order to insure impartiality, members of the board shall be selected without regard to political affiliations: Provided, That of the members first appointed 1 shall be appointed for a term of 1 year, 1 for a term of 2 years, and 1 for a term of 3 years, and thereafter all members shall be apointed for the term of 3 years each.

423.4 Same; oath of office; vacancies; removal; chairman; quorum.

Sec. 4. Members of the board shall qualify by taking and subscribing to the constitutional oath of office, and shall hold office until the appointment and qualification of their successors. Vacancies shall be filled in the same manner as is provided for appointment in the first instance for the remainder of the unexpired term. The governor shall designate 1 member to serve as chairman of the board. Any member of the board may be removed by the governor

for misfeasance, malfeasance or nonfeasance in office, after hearing. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board. Two members of the board shall at all times constitute a quorum; but official orders shall require concurrence of a majority of the board. The board shall have an official seal of which courts shall take judicial notice.

423.6 Secretary, compensation; assistant; expenses.

Sec. 5. The members of the board shall receive compensation of $20.00 per day when in actual performance of duties under the provisions of this act: Provided, That the total compensation for each member of the board shall not exceed $5,000 per annum. Members and employes of the board shall be entitled to actual and necessary traveling and other expenses incurred in the performance of duties under this act. The compensation and expenses of members and employes of the board shall be paid in accordance with the accounting laws of the state.

423.6 Secretary, compensation; assistants, expenses.

Sec. 6. The board may appoint a secretary, who shall receive such compensation and perform such duties and have such powers as the board shall prescribe, and such assistants and employes as it may from time to time find necessary for a proper performance of its duties, who shall be entitled to receive actual and necessary travel and other expenses incurred in the performance of their duties, and such compensation as shall be determined by the board, subject to the laws of this state with respect thereto. The board is also authorized to incur such other expense as may be necessary to carry out the provisions of this act.

423.7 Offices; rules and regulations, authority of board to adopt.

Sec. 7. The principal office of the board shall be in the city of Lansing. It shall be the duty of the board of state auditors to provide suitable office space for the use of the board. The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act.

423.8 Right to organize; collective bargaining.

Sec. 8. It shall be lawful for employes, to organize or to form, join or assist in labor organization, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their employers through representatives of their own free choice.

423.9 Acts required prior to strike or lockout; notice of dispute, service, time; settlement by mediation.

Sec. 9. No strike or lockout shall take place or be put into effect until and unless each of the steps have been taken and the requirements complied with as provided in this act.

1. In the event the parties thereto are unable to settle any dispute, the employees or their representative, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice upon the board of such dispute together with a statement of the issues involved. Said notice may be served personally on any member of the board and a copy thereof personally served upon the other party, or sent by registered mail to the board at a regularly established office thereof and to

the employer at his regular address not less than 10 days before the strike or lockout is to become effective, or in case of an industry affected with a public interest or a public utility or hospital, said notice shall be so served not less than 30 days before the strike or lockout is to become effective.

2. Upon receipt of such notice it shall be the duty of the board to exercise the powers herein granted to effect a settlement of such dispute by mediation between the parties. Prior to the calling of an election as provided hereinafter, it shall be the duty of each of the parties to such dispute to actively and in good faith participate in the mediation thereof. At least 1 member of the board, to be designated by the chairman, shall actively participate in the negotiations to mediate any dispute in an industry affected with a public interest including any public utility or hospital.

HISTORY: Am. 1947, p. 524, Act 318, Eff. Oct. 11.

423.9a Election to srtike; board, notice, holding election, time; expenses; secret ballot; rules, violations.

Sec. 9a. In the event that it becomes apparent to the board that there is no reasonable probability of settlement of such dispute by mediation and that further efforts to that end would be without avail, there shall be held in the case of any impending strike, an election upon such issue which election shall be conducted and supervised by the board. In the event either party to said dispute notifies the board in writing, a copy of which shall at the same time be served on the other party, that in the opinion of such party, further efforts to settle such dispute by mediation

would be without avail, it shall be the duty of the board to cause an election to be held within 10 days of the receipt of such notice unless it is not practical to hold such election within said period, in which event said election shall be held within 20 days of receipt of such notice: Provided, That such board need not call more than 1 election involving the issues set forth in the notice served upon the board. The expense of such election shall be defrayed by the parties to such dispute either equally or upon such other basis as may be agreed upon. Every employee in the bargaining unit shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees in such bargaining unit must vote in favor of such action. Said election shall be by secret ballot, and shall be held on the premises where those voting are employed. The board shall have the power and authority to promulgate such rules and regulations as shall be necessary to effectively conduct any election and the wilful violation of any such rules and regulations shall be a violation of the provisions of this act.

HISTORY: Am. 1947, p. 524, Act 318, Eff. Oct. 11.

423.9b Ceasing employment or operation of business during mediation or until strike authorized, prohibited.

Sec. 9b. It shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a.

HISTORY: Add. 1947, p. 525, Act 318, Eff. Oct. 11.

423.9c Jurisdictional dispute, bargaining unit representation; mediation; election, expenses, rules, violation; strike limitations.

Sec. 9c. Whenever a jurisdictional dispute arises in regard to representation of employees in any bargaining unit, it shall be the duty of each party to such dispute or its representative to at once file with the board a statement of the claim of such party and at the same time serve a copy upon each interested party. Upon receipt thereof it shall be the duty of the board, if possible, to settle such dispute by mediation. If the dispute cannot be settled, the board shall call an election of the employees in the unit involved, as such unit is herein provided, to determine such issue as provided in section 9a of this act. No strike shall take place or be put into effect pending the determination of such issue as herein provided. The expense of such election shall be paid by the union or unions contending for such right of representation. The board shall have the power and authority to promulgate such rules and regulations as shall be necessary to effectively conduct any election and the wilful violation of any such rules and regulations shall be a violation of the provisions of this act.

HISTORY: Add. 1947, p. 525, Act 318, Eff. Oct. 11.

423.9d Agreements to arbitrate, procedure; board of arbitration, powers; determination, filing, court enforcement.

Sec. 9d. Disputes may be submitted to and determined by a board of arbitration if the parties thereto shall agree to such procedure in writing, which agreement shall be filed with the board. Such board of arbitration shall be appointed in the same manner as provided in section 13 of this act for the appointment of an arbitration board, except that notice thereof, including a copy of such agreement, shall

be transmitted by the board to the circuit judge or presiding judge of such county, but not to the governor. Such board of arbitration shall have all the powers conferred upon an arbitration board by sections 13 and 13a of this act and shall file its determination as therein provided, which shall have like effect and the court shall have a like authority to enforce the same as therein specified. Members of the board of arbitration shall be compensated out of the general fund, upon the same basis as members of an arbitration board as provided in section 13 of this act.

HISTORY: Add. 1947, p. 526, Act 318, Eff. Oct. 11.

CONSTITUTIONALITY: See note to Compilers' § 423.13.

423.9e Arbitration board; determination of bargaining unit; adopting unit recognized by employer.

Sec. 9e. The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees the right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: Provided, however, That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract of past practice, as a unit for collective bargaining, the board shall adopt such unit.

HISTORY: Add. 1947, p. 526, Act 318, Eff. Oct. 11.

423.9f Unlawfulness of mass picketing, threats, intimidation or coercion; picketing private residence prohibited.

Sec. 9f. It shall be unlawful to hinder or prevent by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or

to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance. It shall be unlawful for any person acting either individually or as one of a group to engage in picketing a private residence by any means or method whatsoever: Provided, That picketing, to the full extent that the same is authorized under constitutional provisions, shall in no manner be prohibited.

HISTORY: Add. 1947, p. 526, Act 318, Eff. Oct. 11.

423.9g Strike election vote; ballot, statement of employer's latest offer to bargaining unit.

Sec. 9g. Whenever a vote is held pursuant to this act on the question of calling a strike, the board, if so requested by the employer or by the collective bargaining unit to be affected by the strike, shall cause to be either printed on the ballot or affixed thereto a copy or statement of the most recent offer submitted by the employer to the bargaining unit representing the employees in the course of collective bargaining negotiations between said employer and said unit.

HISTORY: Add. 1947, p. 525, Act 318, Eff. Oct. 11.

423.10 Board, duty and authority to assist in settlement.

Sec. 10. After the board has received the above notice, or upon its own motion, in an existing, imminent or threatened labor dispute, the board may and, upon the direction of the governor, the board must take such steps as it may deem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employes which have precipitated

or culminated in or threatened to precipitate or culminate in such labor dispute. To this end, it shall be the duty of the board:

(a). To arrange for, hold, adjourn or reconvene a conference or conferences between the disputants and/or 1 or more of their representatives;

(b). To invite the disputants and or their representatives to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants;

(c). To discuss such grievances and differences with the disputants or their representatives; and

(d). To assist in negotiating and drafting agreements for the adjustment or settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

In carrying out any of its work under this act, the board may designate 1 of its members or an officer of the board to act in its behalf and may delegate to such designee 1 or more of its duties hereunder and, for such purpose, such designee shall have all the powers hereby conferred upon the board in connection with the discharge of the duty or duties so delegated.

423.11 Hearings; witnesses; service of process.

Sec. 11. The board and each member thereof and each person designated thereby shall have power to hold public or private hearings at any place within the state, subpoena witnesses and compel their attendance, administer oaths, take testimony and receive evidence. Subpoenas may be

issued only after the mediation of a dispute shall have been actually undertaken.

(a). In case of contumacy or refusal to obey a subpoena issued to any person, the circuit court of any county within the jurisdiction of which the inquiry is carried on, upon application by the board or commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the board or commission, to produce evidence or to give testimony touching the matter in question. Failure to obey any such order may be punished by the court as a contempt thereof.

(b). Process and papers of the board or commission may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person to be served. Return by the individual serving the same setting forth the manner of such service, return post office receipt or telegraph receipt therefor, shall be proof of service of the same.

423.12 Disqualification of member of board.

Sec. 12. No member or officer of the board having any financial interest in or having membership in or affiliation with any labor organization in a trade, business, or occupation in which a labor dispute exists or is threatened and of which the board has taken cognizance, shall be qualified to participate in any way in the acts or efforts of the board in connection with the settlement or avoidance thereof.

423.13 Voluntary or compulsory arbitration, effecting municipally owned public utility or hospital; procedure.

Sec. 13. In the event of a dispute arising in any public utility, any municipally owned utility, or any hospital, the

board shall not call an election as provided in section 9a of this act, but shall instead certify to the governor the existence of such dispute and the failure to settle the same by mediation. A copy of such certification shall be immediately transmitted to the respresentative of the employees, to the employer or his agent and to the presiding circuit judge of this state. Whereupon the parties to the dispute, or their representatives, may within 10 days voluntarily agree to submit the issues of the dispute to an arbitration board of their own choosing, in which event both parties to the dispute shall notify the board that they have so agreed. If they fail to do so, an arbitration board shall then be established of which a circuit judge designated by the presiding circuit judge of the state, shall be chairman. The employees or their representative and the employer or his agent shall each appoint 1 member of such arbitration board, which appointment shall be made within 5 days from the date of service of a copy of such certification and notice of such appointment shall be forthwith given to the labor mediation board, the governor and such circuit judge or presiding circuit judge. In the event of the failure to make any such appointment within the time herein limited, the governor shall make such appointment in writing, file a copy thereof with the board, such circuit judge or presiding judge and furnish copy thereof to each of the interested parties.

It shall be the duty of such arbitration board to hold public hearings at any place in the state for the purpose of making a determination of the issues involved in such dispute. Such arbitration board shall have the authority to subpoena witnesses, to compel their attendance, administer oath, take testimony and receive evidence. Such arbitration board shall, as soon as practicable, but within 30 days from the date the issues have been submitted, make a determination of the issues involved in said dispute, file a written

copy thereof with the labor mediation board and cause a copy to be delivered by registered mail or otherwise to the employees or their representative and the employer or his agent. A determination by any 2 members of the arbitration board shall be deemed to be the determination of such board. A copy thereof shall also be filed in the office of the county clerk of the county in which is located such principal place of employment. The terms and conditions of employment of such employees shall be modified in accordance with such determination from the date specified therein and shall be binding on the employer and his agent and the employees and their representative. Whenever any act is required to be performed according to the provisions hereof within a given time limitation, except serving of notices of the existence of disputes, the period so limited may be extended by agreement in writing by all parties concerned.

Each member of the arbitration board, except such circuit judge, shall be entitled to receive compensation of $25.00 per day during the period of the actual performance of his duties under this act. Each member shall receive his actual travel and other necessary expenses incurred during said period which shall be paid out of the general fund.

HISTORY: Am. 1947, p. 526, Act. 318, Eff. Oct. 11.

CONSTITUTIONALITY: Insofar as the amendatory act conferred nonjudicial powers upon the circuit judge, it is unconstitutional. Local 170, Transport Workers Union of America v. Genesee Cir. Judge, 322 Mich. 332.—NW (2d).

423.13a Circuit court aid in compelling attendance or testimony of witnesses; subpoena, contempts; injunctions.

Sec. 13a. In case of the disobedience of a subpoena, the board may invoke the aid of any circuit court of the state of Michigan in requiring the attendance and testimony of witnesses pertaining to the issues involved. Any circuit

court of this state within the jurisdiction of which such hearings are being held, may in the case of contumacy or refusal to obey a subpoena issue an order requiring such person to appear before said board and give evidence pertaining to the matter in question and any failure to obey such order of the court may be punished by such court as contempt thereof. Any failure to obey a subpoena issued by an arbitration board or contumacy before such board, may be punished by any circuit court of this state within the jurisdiction of which such hearings are being held, as contempt of such court.

Nothing in this act shall be construed to require an employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment. No court shall have power to issue any process to compel any such employee to continue to render such labor or remain at his place of employment without his consent.

If after the determination is filed as above provided there is an actual or threatened cessation of employment which causes or may reasonably be expected to result in injury to the public welfare, peace, health or safety the circuit court in chancery of the county in which said determination is filed shall have jurisdiction to issue such injunction as the court may deem proper and adequate to protect the public welfare and preserve public peace, health and safety, subject however to the limitations hereinabove set forth: Provided, That no circuit judge shall issue an injunction or preside in any case involving a dispute in which a determination has been made by a board of which he was chairman. In the event that he is the only circuit judge in such circuit, then the judge of any adjoining circuit or other judge designated by the state persiding judge shall have jurisdiction to issue a temporary injunction or order to show cause, including a restraining order in such matter, and the

same shall be brought on to be heard before a judge designated by the presiding circuit judge of the state.

HISTORY: Add. 1947, p. 527, Act 318, Eff. Oct. 11.

423.14 Closed Shop; agreements between employer and union.

Sec. 14. Nothing in this act shall be construed to interfere with the right of an employer to enter into an all-union agreement with 1 labor organization if it is the only organization established among his employes and recognized by him, by consent, as the representative of a majority of his employes; nor shall anything in this act be construed to interfere with the right of the employer to make an all-union agreement with more than 1 labor organization established among his employes if such organizations are recognized by him, by consent, as the representatives of a majority of his employes.

423.15 Unlawful taking possession of property, penalty.

Sec. 15. It shall be unlawful for any person to enter or take part in entering upon or take possession or control of any property or withhold possession of property, against the will of the owner thereof, or other person in the rightful possession or use thereof, or interfere with the free use thereof, whether the same be accomplished by force, threats, intimidation, artifice or strategem. Violation of this provision shall be a misdemeanor and punishable as such.

423.16 Company unions, interference with unions and discrimination prohibited; penalty.

Sec. 16. It shall be unlawful for an employer to initiate, create, dominate, contribute to, or interfere with the forma-

tion or administration of any labor organization; to discriminate in regard to hire, terms or other conditions of employment in order to discourage membership in any labor organization; or encourage membership in, or initiate, create, dominate, or contribute to a company union; or to discriminate against an employe because he has given testimony before the board or commission. Violation of this section shall be a misdemeanor and punishable as such.

423.17 Coercion to join union or to refrain from work; penalty.

Sec. 17. It shall be unlawful for any employe or other person by force, coercion, intimidation or threats to force, or attempt to force any person to become or remain a member of a labor organization, or for any employe or person by force, coercion, intimidation or threats, to force or attempt to force any person to refrain from engaging in employment. Violation of this section shall be a misdemeanor and punishable as such.

Sec. 18. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 409, Act 267, Imd. Eff. May 25.

423.19 Liberal construction of act; police powers.

Sec. 19. This act shall be deemed an exercise of the police power of the state of Michigan for the protection of the public welfare, safety, prosperity, health and peace of the people; and all the provisions of this act shall be liberally construed for the accomplishment of said purposes.

423.20 Expense; persons exempt from act.

Sec. 20. The expenses of carrying out the provisions of this act shall be paid from appropriations made therefor by the legislature. The provisions of this act shall not apply to employes or employers under the jurisdiction of the railway labor act nor to any dispute between employers or employes involving farm labor or domestic employment.

Sec. 21. (This was a repeal section.)

HISTORY: Rep. 1945, p. 409, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 230, 1915, C. L. 1929, 8616-8628.

423.22 Unlawfulness of calling or causing strike or lockout before serving notice, pending mediation, election or arbitration; other violations; penalties.

Sec. 22. Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, or who shall cause or call a lockout, without first having served notice as required in section 9 of this act, or while mediation is pending as provided in section 9c of this act, or while an election is pending under said section 9, or while arbitration proceedings are pending under sections 9d and 13 of this act, or any person who shall engage in unauthorized picketing as prohibited by this act, or who shall knowingly and wilfully violate any of the rules or regulations promulgated under section 9a and section 9c, or any of the provisions of section 9f, shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

HISTORY: Add. 1947, p. 528, Act 318, Eff. Oct. 11.

423.22a Use of other legal or equitable remedy.

Sec. 22a. The board, or any person, labor organization, firm or corporation may pursue any proper legal or equitable remedy or relief in any court of competent jurisdiction for any act or conduct in violation of any of the provisions of this act.

HISTORY: Add. 1947, p. 528, Act 318, Eff. Oct. 11.

APPENDIX "B"

Pertinent sections of Michigan Labor Mediation Law, as amended by Act No. 230, Mich. Pub. Acts 1949, effective June 23, 1949, viz., §§ 2 (b), 9, 9a, 15, 16, 17, 22 and 24.

§ 2 (b)

Sec. 2. When used in this act, unless the language or context indicates otherwise:

(b). The terms "dispute" and "labor dispute" shall include but are not restricted to any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of employees in negotiating, fixing, maintaining or changing terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

§ 9

Sec. 9. No strike or lockout shall take place or be put into effect until and unless each of the steps have been taken and the requirements complied with as provided in this section.

1. In the event the parties thereto are unable to settle any labor dispute, the employees or their representatives, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice of such dispute together with a statement of the issues involved upon the board and the other party to the dispute. Said notice may be served personally on any member of the board and a copy thereof personally served upon the other party, or sent by registered mail to the board at a

regularly established office thereof and to the employer or the representative of his employees at his regular address not less than 10 days before the strike or lockout is to become effective, or in the case of an industry rendering a hospital or public utility service, said notice shall be so served not less than 30 days before the strike or lockout is to become effective.

2. Upon receipt of such notice it shall be the duty of the board to exercise the powers herein granted to effect a settlement of such dispute by mediation between the parties. Prior to the calling of an election as provided hereinafter, it shall be the duty of each of the parties to such dispute to actively and in good faith participate in the mediation thereof. At least 1 member of the board, to be designated by the chairman, shall actively participate in the negotiations to mediate any dispute in an industry rendering a hospital or public utility service.

§ 9a

Sec. 9a. (1). In the event that it becomes apparent to the board that there is no reasonable probability of settlement of a labor dispute by mediation and that further efforts to that end would be without avail, there shall be held in the case of an impending strike, an election upon such issue which election shall be conducted and supervised by the board, or by its duly authorized representative. In the event either party to said dispute notifies the board in writing, a copy of which shall at the same time be served on the other party, that, in the opinion of such party, further efforts to settle said dispute by mediation would be without avail, it shall be the duty of the board to cause an election to be held within 10 days of the receipt of such notice unless it is not practicable to hold such election within said period, in which event said election shall be held

within 20 days of receipt of such notice. Every employee in the bargaining unit, which is involved in such dispute, as such bargaining unit is determined under section 9e of this act or as recognized by the employer or as identified by contract or past practice, shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees casting valid ballots must vote in favor of such action. Said election shall be by secret ballot, and shall be held on the premises where those voting are employed unless the board shall determine that the election cannot be fairly held there, in which case it shall be held at such place as the board shall determine. The board shall have the power and authority to promulgate such rules and regulations as shall be necessary to effectively conduct any election, including provisions for absentee voting. Such provisions shall facilitate voting by all employees, but shall also insure secrecy of the ballot. The wilful violation of any such rules and regulations shall be a violation of the provisions of this act. The board shall also have the power and authority to determine, after proper hearing (which may be held either before or after an election and may be conducted by a duly authorized representative of the board) any disputed issue concerning the eligibility of a person or persons to vote in such election. Any such determination with respect to eligibility shall be applicable to the administration of this section, but shall have no force and effect for any other purpose under this act.

(2). Anything in this section to the contrary notwithstanding, if a dispute involves a hospital or public utility service, and said dispute is certified to the governor as provided in section 13a of this act, an election under this section 9a shall not be conducted until the expiration of at least 10 days following the filing with the governor of the report of such special commission.

§ 15

Sec. 15. It shall be unlawful for any person to enter or take part in entering upon, or take possession or control of, any property, or to withhold possession of property, against the will of the owner thereof, or other person in the rightful possession or use thereof, or to interfere with the free use thereof, whether the same be accomplished by force or unlawful threats. Violation of this provision shall be a misdemeanor and punishable as such.

§ 16

Sec. 16. It shall be unlawful for an employer or any officer or agent of an employer (1 to interfere with, restrain, or coerce employees in the exercise of their right to self-organization, (2) to initiate, create, dominate, contribute to, or interfere with the formation or administration of, any labor organization; (3) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in any labor organization; (4) or encourage membership in, or initiate, create, dominate, or contribute to a company union; or (5) to discriminate against any employee because he has given testimony or instituted a proceeding under this act. Violation of this section shall be a misdemeanor and punishable as such.

§ 17

Sec. 17. It shall be unlawful (1) for any employee or other person by force or unlawful threats to force, or attempt to force any person to become or remain a member of a labor organization, or (2) for an employee or other person by force or unlawful threats to force or attempt to

force any person to refrain from engaging in employment. Violation of this section shall be a misdemeanor and punishable as such.

§ 22

Sec. 22. (a). It shall be unlawful for an employer to engage in a lockout or for a labor organization to engage in or instigate a strike (1) without first having served notice as required in section 9 of this act, or (2) which has not been authorized by a vote of employees as required by section 9a of this act, or (3) while mediation is pending or proceeding with respect to the issues involved under section 9a of this act, or (4) while mediation or an election is pending under section 9c of this act, or (5) while any of the procedures specified in sections 13a to 13e, inclusive, are pending or proceeding with respect to the issues involved. Any employer or labor organization which commits such unlawful act, shall upon conviction thereof, be punished by a fine of not more than $1,000.00 for each such violation, and for this purpose each day during which such unlawful act occurs or continues shall be deemed to constitute a separate offense.

(b). It shall be unlawful for any individual to instigate a lockout or strike which is unlawful under this section. Any individual who commits such unlawful act, shall, upon conviction thereof, be guilty of a misdemeanor and punishable as such.

(c). The board, the attorney general, or any prosecuting attorney, on behalf of the people, or any individual or person, may pursue any appropriate legal or equitable remedy or other relief in any circuit court having jurisdiction with respect to any act or conduct in violation of any of the pro-

visions of this act. The existence of a criminal penalty with respect to any such act or conduct shall not be deemed to preclude appropriate equitable relief.

§ 24

Sec. 24. Any person who shall conspire with 1 or more other persons to violate any of the provisions of this act, violation of which is made a penal offense hereunder, shall upon conviction thereof, be deemed guilty of a misdemeanor, and punished by a fine of not to exceed $1,000.00, or by imprisonment of not to exceed 6 months, or both.

APPENDIX "C"

Pertinent provisions of Labor Management Relations Act, 1947, viz., § § 10 (a), 14 (a), 202 (c), 203 (a) and (b), and 303 (b), supplementing appellants' Appendix "B". 61 Stat. 146, 151, 153 and 158.

§ 10 (a)

"Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

§ 14 (a)

"Sec. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as em-

ployees for the purpose of any law, either national or local, relating to collective bargaining."

§ 202 (c)

"Sec. 202. . . .

(c) The principal office of the [Federal Mediation and Conciliation] Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. . . . The Director may establish suitable procedures for cooperation with State and local mediation agencies. . . .".

§ 203 (a) and (b)

"Sec. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be

the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement."

§ 303 (b)

"**Sec. 303. (b)** Whoever shall be injured in his business or property by reason or of any violation of subsection (a) may use therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

APPENDIX "D"

Official reports and releases issued by the Michigan Labor Mediation Board

1

Annual Report of Michigan Labor Mediation Board June 1947

Labor disputes handled by the Michigan Labor Mediation Board show an increase of 33 percent over last year, it was disclosed today in the annual report of the Board. The 3,301 cases received during the fiscal year beginning July 1, 1946 and ending June 30, 1947 also represents approximately five times the 666 cases received during the Board's first year of operations in 1939-1940.

Although the number of cases handled have shown a marked and progressive increase in the seven intervening years—with the exception of 1942-1943 when for a period, organized labor's no-strike pledge was in effect—strikes have decreased in number since the all-year high of 713 in 1944-1945 and amounted to only 278 this fiscal year—a drop of 147 strikes from last year's figure.

Chairman Philip Weiss of the Mediation Board attributes the success of the mediators in settling disputes before they reach the strike stage to the Board's policy of preventing primarily and settling secondarily, labor disputes. Weiss indicated that this policy is carried out partly by the Board's advisory capacity in matters that might easily develop into disputes, and partly by the Board's educational program to bring about a better understanding on the part of both labor and management of what the Board can do to assist them in the solution of their problems.

The report shows that manufacturing maintained top place in the types of industries involved by strikes, with a total percentage of over 64.4. Service (including transportation) was second with a percentage of 15.1 this fiscal year, and construction and wholesale-retail were almost tied for third place with 10.4 and 10.1 respectively.

Chief reasons for strikes were: wages, 46.1; contract, 12.8; discharge of employees, 10.4; recognition, 9.1; working conditions, 6.1; discipline, 2.0; jurisdictional, 1.7; seniority, 0.7 and other various reasons totaled 11.1 percent.

The most strikes occurred in the 1946-1947 fiscal period during the month of June with a total of 37 on record. July, 1946 was second high with a total of 35. December was low with only six strikes, and was the only month with less than 13 strikes on record.

Although June had the highest strike record for the fiscal period, approximately half as many new cases were received that month as in May, which had the highest number of new cases, totaling 623. The fewest cases were received in November (72) and December (82). All others were over the one hundred mark, with an average throughout the year of 275 new cases per month.

The number of people involved in Michigan strikes has decreased from 301,165 in the fiscal year 1945-1946 to 165,839 for the period 1946-1947. (In 1944-1945 a total of 687,491 persons were involved.) Man hours lost for the past fiscal year were 22,141,051 as compared to the previous (1945-1946) figure of 38,130,058.

STATE OF MICHIGAN
LABOR MEDIATION BOARD

The following tables show the number of cases received, together with the total number of persons employed by the establishments in which these disputes occurred, for the fiscal year beginning July 1, 1947 and ending June 30, 1948, and strike data for the same period.

Month	Cases Received	Total Employment
July	122	65,273
August	250	67,794
September	502	55,656
October	406	39,825
November	172	29,792
December	243	109,915
January	563	45,499
February	253	78,990
March	878	221,645
April	705	164,088
May	281	80,436
June	356	237,126
Totals	4,771	1,196,039

Month	Strikes	No. of Persons Involved	Total Employment	No. of Man Days Lost
July	20	32,802	55,368	261,997
August	22	5,264	29,466	164,242
September	5	281	322	30,927
October	7	2,746	7,635	23,480
November	2	67	3,050	19,215½
December	2	254	306	3,082
January	6*	1,020	17,560	23,860
February				11,575**
March	7	1,689	17,855	19,089
April	8	12,907	20,552	34,221
May	8	70,205	70,510	1,134,890
June	20	20,882	23,288	240,734
Totals	107***	148,117	245,911	1,967,321½

*Includes 1 lockout.

**Man days and hours lost during this month represent those lost in strikes and lockouts which began in previous months and continued during the month of February.

***This includes "wild-cat" or illegal strikes. Of the disputes in which the Board had jurisdiction by direct notification and strike election as provided by the Labor Mediation Act, only 1% reached the point of work stoppage after mediation began.

ADDITIONAL COMPARATIVE DATA

Fiscal Period	Cases Received	Strikes
1939-1940	666	66
1940-1941	905	156
1941-1942	1,226	239
1942-1943	829	221
1943-1944	1,225	553
1944-1945	1,435	713
1945-1946	2,168	425
1946-1947	3,301	278
1947-1948	4,771	107
Totals	16,526	2,758*

(*Including "wild-cat" or illegal strikes.)

Fiscal Period	No. of Strikes	No. of Persons Involved	No. of Man Days Lost
1943-1944	553	312,144	1,052,082
1944-1945	713	687,491	1,702,180
1945-1946	425	301,165	4,766,287
1946-1947	278	165,839	2,767,631
1947-1948	107	148,117	1,967,321½

It will be noted that the number of cases received during the past fiscal year, 1947-48, has increased by 45% over the fiscal year 1946-47.

Also noteworthy is the fact that the number of strikes during that same period has decreased from 278 to 107, or 62%.

As of June 30, 1948, the active case load was 1,506 cases, and, of course, all cases other than those included in the active case load have been settled and closed.

Percentage Data Regarding Strikes

July 1, 1947-June 30, 1948

Types of Industries Involved	%
Manufacturing	82.2
Service (including transportation)	11.2
Wholesale-Retail	4.7
Construction	1.9

Reasons for Strikes	%
Wages	35.5
Working Conditions	5.9
Contract	28.9
Recognition	7.6
Seniority	1.7
Discharge	11.9
Jurisdictional	1.7
Discipline	6.8

2

Statistics released by Michigan Labor Mediation Board June 1948

STATE OF MICHIGAN

LABOR MEDIATION BOARD

The following tables show the number of cases received, together with the total number of persons employed by the establishments in which these disputes occurred, for the

fiscal year beginning July 1, 1946 and ending June 30, 1947, and strike data for the same period.

Month	Cases Received	Total Employment
July	212	78,809
August	109	39,669
September	140	58,288
October	437	153,877
November	72	20,949
December	82	46,183
January	161	50,613
February	206	35,914
March	396	36,215
April	550	265,917
May	623	184,623
June	313	89,271
Totals	3,301	1,060,328

*This includes "wild-cat" strikes. Of the disputes in which the Board had

Month	Strikes	No. of Persons Involved	Total Employment	No. of Man Hours Lost
July	35	8,776	28,238	2,260,205½
August	28	13,000	17,869	1,189,171½
September	31	21,208	31,505	1,300,202
October	15	4,369	12,306	546,955
November	18	3,416	9,040	470,773
December	6	2,976	21,581	655,349
January	28	17,751	18,534	423,153
February	13	803	3,238	661,978
March	18	3,139	3,689	238,831
April	26	41,148	62,283	6,241,572
May	23	30,616	107,520	5,578,816
June	37	18,577	74,841	2,574,045
Totals	278*	165,839	390,644	22,141,061

*This includes "wild-cat strikes. Of the disputes in which the Board had jurisdiction by direct notification as provided in the Labor Mediation Act, less than 4% reached the point of work stoppage after mediation was begun.

ADDITIONAL COMPARATIVE DATA

Fiscal Period	Cases Received	Strikes
1939-1940	666	66
1940-1941	905	156
1941-1942	1,226	239
1942-1943	829	221
1943-1944	1,225	553
1944-1945	1,435	713
1945-1946	2,168	425
1946-1947	3,301	278
Totals	11,755	2,651*

(*Including "wild-cat" or illegal strikes.)

Fiscal Period	No. of Strikes	No. of Persons Involved	No. of Man Hours Lost
1943-1944	553	312,144	8,416,656
1944-1945	713	687,491	13,617,441
1945-1946	425	301,165	38,130,058
1946-1947	278	165,839	22,141,051

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. —

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., ETC., APPELLANTS

v.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY, AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE IN SUPPORT OF JURISDICTION

The National Labor Relations Board believes that the constitutional question presented by this appeal, namely, whether the Michigan strike limitation statute can be applied to employees engaged

in interstate industries compatibly with the National Labor Relations Act, is of substantial importance in the administration of the National Act and warrants review by this Court. The decision below purports to follow the decision of this Court in *International Union, U.A.W.A., A.F. of L., Local 232* v. *Wisconsin Employment Relations Board*, 336 U.S. 245. The Board is of the opinion that the holding in that case does not and should not control the question here in issue.

1. *The Michigan Act deals with a subject matter completely preempted by Congress in the National Act.* In the *U.A.W.* case this Court held that the states were free to enjoin the intermittent or recurrent work stoppages there involved because Congress had neither protected such activity under Section 7 nor had it outlawed or authorized the Board "to prohibit or to supervise the activity . . . nor to entertain any proceeding concerning it" (336 U. S. 245, 263). In the *U.A.W.* case there was no evidence that Congress had considered the question whether the "coercive tactics" utilized in that case should or should not be protected by Federal law, and, in the Court's view, the National Board was powerless to condemn such practices "because it is the objectives only and not the tactics of a strike which bring it within the power of the Federal Board" (336 U S. 245, 263).

The union conduct condemned by the Michigan statute, here in issue, however, is not thus removed

from the field covered by the National Act. In the first place the legislative history of the amended Act shows that Congress expressly considered whether or not strikes engaged in by a minority of the employees in a bargaining unit without approval of the majority should continue to enjoy the protection of Section 7. The original House Bill, H.R. 3020, 80th Cong. 1st Sess., made if an unfair labor practice for a labor organization to call a strike without authorization from a majority of the employees voting by secret ballot (Section 8 (*c*) (8)). This House provision, virtually the parallel of the Michigan law, was rejected by Congress. Congress did not leave to the individual states power to override its judgment that such a limitation upon strikes was undesirable. Unlike the provisions dealing with the union shop, Sections 8 (a) (3), 8 (b) (2), 14 (b), Congress left no room for the exertion of state power in this field. Since Section 7 had previously been construed as protecting strikes for a legitimate objective engaged in by a minority of the employees in a bargaining unit without the approval of a majority, rejection of the House proposal to remove such strikes from the area of protected concerted activities must be taken as signifying Congressional approval of that construction.

Secondly, Congress in the amended Act adopted provisions which in certain circumstances limit the right to strike during specific periods, and until certain notices have been given. Section 8(d),

discussed more fully below (p. 10, *infra*), applies such limitation to strikes arising out of attempts to modify or terminate collective bargaining contracts. Congress subjects strikes in violation of this provision to the regulatory power of the Board. The action of a labor organization in calling a strike without giving the notices required by Section 8(d), or during the 60-day waiting period prescribed therein, is an unfair labor practice under Section 8 (b) (3) of the Act, as amended. In Sections 206-210 of the Labor Management Relations Act, Congress further provided for the issuance of temporary injunctions against strikes involving the national health, safety and welfare, and, in that connection provided for the conduct of elections by the National Board among the employees involved. We think it clear that by enacting these detailed provisions dealing with waiting periods in strike situations subject to the National Act Congress intended to and did occupy that field and left no room for the imposition by the states of similar or additional restrictions. *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, 775-776.

The instant case involves a strike arising out of an attempt to modify the terms of an existing agreement, and was therefore subject to the notice and waiting requirements of Section 8 (d) of the National Act (R. 9). The union complied with these requirements (R. 10-11, 19, 27), and the strike

thereby qualified for the protection accorded by Section 7. The waiting period imposed by the Michigan law operates in the very field covered by the National Act, and penalizes activities which enjoy Federal sanction. The Michigan law thus stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767, 773.

2. *In practical administration the Michigan Act conflicts with and obstructs effectuation of Federal policy in the field of collective bargaining.* By decision and certification of the National Board the Union represents in a single bargaining unit employees of the Chrysler Corporation employed in plants located in the states of Indiana and California as well as the State of Michigan. *Matter of Chrysler Corp.*, 13 N. L. R. B. 1303, 17 N. L. R. B. 737; (R. 108, Ex. 4, p. 1). The successive collective bargaining agreements between the Union and the Chrysler Corporation apply to all employees in this bargaining unit (*ibid*). The National Act contemplates that to effectuate its policies all employees in a bargaining unit found appropriate by the Board shall be free to act together in collective bargaining and related activities. The one exception relates to union security arrangements where Congress specifically provided that the policy of the National Act was to depend upon the prohibitory legislation of individual states (Section 14 (b)).

The elections provided for by the Michigan law are limited by the statute to employees in a bargaining unit defined by the state board, in this case a unit necessarily narrower than that certified by the National Board. The Michigan statute, by imposing waiting period limitations upon employees in the Company's Michigan plants which are not imposed upon employees in the Company's Indiana and California plants, *pro tanto* prevents the employees in the bargaining unit from taking uniform action in support of lawful bargaining demands, and thereby impairs Federal policy in the field of collective bargaining.

3. *The Michigan statute, as applied to employees subject to the National Act, invades rights protected by the National Act.* In the *U.A.W.* case, 336 U.S. 245, 264-265, this Court held that "recurrent or intermittent unannounced stoppage of work to win unstated ends was * * * [not] legalized and approved" by the National Act, and concluded for this reason that the states were not precluded by the National Act from enjoining such "coercive tactics." The Court pointed out that the affirmative protection accorded by Section 7 of the National Act to "concerted activities for the purpose of collective bargaining" does not extend to "every type of concerted activity" (336 U. S. at p. 257), or to "every kind of strike" (336 U. S. at p. 260). In determining whether the states were empowered to enjoin the particular union conduct involved in

that case the Court looked to relevant Board and court decisions construing Section 7 of the National Act (336 U. S. at pp. 255-257). It concluded that the state prohibition could stand because neither the "bare language of Section 7," nor "the settled interpretation of the Act by the Board," nor applicable decisions of the Supreme Court and of various Courts of Appeals "immunize the conduct forbidden by the judgment below" (336 U. S. at pp. 255, 257).

We do not believe the Court decided in that case that Sections 7 and 13 of the National Act contain no protection for *any* type of strike or work stoppage in aid of collective bargaining, and that the states are free to enjoin strikes or work stoppages which are thus protected. On the contrary, the language of the opinion, which denies to Section 7 the effect of protecting "*every* type of concerted activity," "*every* kind of strike," or "*all* concerted activities" (336 U. S. at p. 257, 260, italics supplied), implies recognition that some forms of strikes and work stoppages in aid of collective bargaining are affirmatively protected by Section 7 against state interference. Resort to Board and court decisions which distinguish between types of strikes and other concerted activities which are protected by Section 7 from those which are not, would have been superfluous if the Court meant to hold that Section 7 did not have the effect of precluding state interference with the exercise by employees of the right to en-

gage, at least, in traditional forms of concerted activity in aid of collective bargaining. Consequently, it cannot be said that the *U.A.W.* case authorizes state interference with the type of concerted activities involved in this case.

Section 7 affirmatively grants to employees the right to engage in "concerted activities for the purpose of collective bargaining." That grant clearly comprehends the right of employees to engage in the traditional type of strike, such as that here involved, in support of lawful collective bargaining demands. The strike is the classic, and historically the most important, form of labor's "concerted activities" for purposes of collective bargaining. Congress regarded the right of employees to strike, *i. e.*, to withhold their labor for the purpose of bringing economic pressure to bear upon employers to secure stated demands, as indispensable to equalization of employee bargaining power and hence to the process of collective bargaining.

The Board and the courts have uniformly held that the right of employees to strike in aid of lawful collective bargaining demands or to secure redress of grievances is affirmatively protected by Sections 7 and 13 of the Act. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 345-347; *National Labor Relations Board* v. *Fansteel Corp.*, 306 U. S. 240, 256; *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (C.A. 6), certiorari denied, 332 U. S. 762; *Matter of American Manufacturing Co.*, 5

N. L. R. B. 443, enforced, 106 F. 2d 61 (C.A. 2), affirmed, 309 U. S. 629. The Board, as well as both courts of appeals which have considered the matter, has likewise held that Section 7 protects the right of a minority of the employees in a bargaining unit to strike in aid of legitimate demands, just as it protects the right of the majority. *Kalamazoo Stationery* case, *supra; National Labor Relations Board* v. *Draper Corp.*, 145 F. 2d 199, 205 (C. A. 4). To deprive employees altogether of the right to strike, as does the Michigan statute, unless they first secure the approval of a majority of the employees in a bargaining unit, is to deny to employees a right clearly protected by the National Act. Cf. *Hill* v. *Florida*, 325 U. S. 538.

Moreover, the Michigan statute obstructs and impedes the exercise of the federally protected right to strike even when a strike is approved and participated in by a majority, or, indeed, by all of the employees in a bargaining unit. Under Section 9 of the state act no strike may lawfully take place within a 10-day period following the giving of notice, by the employees or their representative, to the State Mediation Board. Nor may a strike lawfully occur until the State Board conducts an election. Thus even if the employees unanimously favor a strike during this period they are precluded by the Michigan law from engaging therein. Speaking of the National Act prior to amendment, the Court of Appeals for the Sixth Circuit pointed out

in *National Labor Relations Board v. Kalamazoo Stationery Co.*, 160 F. 2d 465, 471, certiorari denied, 332 U. S. 762, that "The Federal Act does not require the giving of notice of a pending dispute followed by a cooling-off period" as a condition precedent to protection of the right to strike. It concluded that the Michigan Act there involved could not constitutionally be applied in industries subject to the National Act.

In the amended Act Congress narrowed the area of protection accorded to strike activities by requiring in Section 8 (d) that a party desiring to terminate or modify a collective bargaining agreement must notify the other party 60 days prior to the time it is proposed to make such termination and modification, must notify the federal and state conciliation agencies 30 days prior to such time, and must continue in effect, without strike or lock-out, the terms of the existing agreement for 60 days or until the contract expires. The same section provides that any employee who engages in a strike during such period shall lose his status as an employee of the employer involved. But it should be noted that the limitation contained in the National Act as amended, applies only "where there is in effect a collective-bargaining contract." The limitation embodied in the Michigan Act, however, contains no such restriction, and unlike Section 8 (d), applies to strikes which do not involve modification or termination of existing agreements. As to such strikes it remains true under the amended as under

the original act that the "Federal Act does not require the giving of notice of a pending dispute followed by a cooling-off period," and, hence, this Michigan Act, as the court held of its predecessor in the *Kalamazoo Stationery* case, "impairs, qualifies [and] . . . subtracts from" rights guaranteed by the National Act.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the constitutional question herein presented is substantial; that the judgment below conflicts with controlling decisions of this Court; and that this Court should therefore entertain the appeal. If this Court should decide to note probable jurisdiction, the Board respectfully prays leave to participate in oral argument on the merits of the constitutional issue.

Respectfully submitted,

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NOVEMBER, 1949.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., ETC., APPELLANTS

v.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY, AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, DEFENDANTS AND APPELLEES

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of the State of Michigan (R. 121–134) is reported sub nom. *International Union, etc.* v. *McNally,* in 325 Mich. 250, 38 N. W. 2d 421. The opinion of Judge Richter in the Circuit Court, Wayne County is attached to appellants' Statement as to Jurisdiction.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1257 (2) of Title 28, U. S. C. On December 12, 1949, this Court entered an order noting probable jurisdiction.

QUESTION PRESENTED

The Board's interest in this case is limited to the single question, whether the provisions of the National Labor Relations Act preclude Michigan from prohibiting the calling of strikes incident to lawful collective bargaining demands unless a prescribed procedure for mediation is followed, and unless a majority of the employees in a State defined bargaining unit authorize such strike in a State conducted secret ballot election.

STATUTES INVOLVED

The pertinent provisions of the Bonine-Tripp Act, Act No. 318, Public Acts of Michigan, 1947, Michigan Stats. Ann. 1947 Cum. Supp. § 17.454 (1) *et. seq.*, Comp. Laws, 1948, § 423.1 *et seq.*; of the National Labor Relations Act (49 Stat. 449, 29 U. S. S. 151, *et seq.*); and of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141 *et seq.*), are set forth in the Appendix, *infra*, pp. 61–76.

STATEMENT

On July 30, 1942, the National Labor Relations Board found that the production and maintenance

employees of the Chrysler Corporation, hereinafter called the Company, employed at fourteen plants, ten of which are located in Michigan, three in Indiana and one in California, constituted an appropriate unit for purposes of collective bargaining within the meaning of Section 9 (b) of the National Act and certified International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C. I. O., hereinafter called the Union, as the exclusive bargaining representative of the employees in that unit.[1] From time to time thereafter the Union and the Company entered into collective bargaining agreements covering the employees in this unit (R. 14, 80–81, 85). The contract involved in the case at bar was entered into on April 26, 1947, and was terminable at the option of either party on April 26, 1948 (R. 14, 80, 115–116). In February 1948, a dispute arose between the Union and the Company concerning

[1] *Chrysler Corp.*, 42 NLRB 1145. The pamphlet containing the contract which was introduced in evidence in this case, in listing the history of contract relationships between the Company and the Union, mentions a certification of the Board issued in the "fall of 1939" (R. 14, 80–81). On November 16, 1939, the Board found a unit composed of twelve plants, ten located in Michigan, one in Indiana, and one in California, appropriate. *Chrysler Corp.*, 17 NLRB 737. It was not until July 30, 1942, that the Board found appropriate and certified the Union as the representative of the fourteen plants listed in the contract introduced in evidence. Compare the list of plants set out at R. 85 with the list set forth by the Board in 42 NLRB 1145, 1150.

amendment of the wage provisions of the contract, and during that month the Union, pursuant to Section 8 (d) of the National Act, gave notice to the Company of its intention to terminate the contract unless agreement was reached concerning the wage issue in dispute (R. 8–9).

On March 11, 1948, again pursuant to the provisions of Section 8 (d) of the Labor Management Relations Act of 1947, the Union notified the Federal Mediation and Conciliation Service and the Michigan State Labor Mediation Board, of its intention to strike to enforce its wage demand (R. 9–10, 21–22). On May 11, 1948, after efforts at mediation and conciliation had been exhausted (R. 15–16, 18–19), the Union received a telegram from Philip Weiss, Chairman of the Michigan State Labor Mediation Board advising that (R. 10–11, 31–32), "any work stoppage of Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended." Believing that the attempted application of the Michigan Act was unconstitutional, the Executive Board of the Union disregarded this communication and called a strike which was put into effect on May 12, 1948 (R. 33–34, 11, 12–14, 15–16, 23; 24–26, 27, 28–29, 33–34, 38–39). Appellants thereby, as the court below held (R. 121–122), subjected themselves to criminal prosecution under Section 22 of the Michigan Act.

On May 29, 1948, appellants filed an amended and supplemental bill of complaint in the circuit court, Wayne County, alleging, *inter alia,* that Section 9, 9a and 9b of the Michigan Act were unconstitutional by virtue of conflict with the Labor Management Relations Act of 1947, and requesting that the defendants, prosecuting attorney of Wayne County and Attorney General of the State of Michigan, respectively, be enjoined from prosecuting them for violation of the Michigan Act (R. 39–45). Thereafter, on August 3, 1948, the Circuit Court of Wayne County entered its opinion (R. 66–69), and on August 11, 1948, entered its decree (R. 70–71), perpetually enjoining the defendants from prosecuting the appellants for any alleged violations of the challenged provisions of the State Act. The court held that the provisions of the Michigan Act requiring a strike vote and penalizing the calling or instigating of strikes while an election is pending were unconstitutional because they contravened the due process clauses of the State and Federal Constitutions and conflicted with the Labor Management Relations Act (R. 69).

On June 29, 1949, the Supreme Court of Michigan entered its opinion (R. 121–134), and decree (R. 135), reversing the judgment of the Circuit Court and dismissing the bill of complaint. The court held, *inter alia,* that prosecution of appellants for violation of the challenged provisions of the Michigan Act would not conflict

with the Labor Management Relations Act of 1947.

SUMMARY OF ARGUMENT

I

A. The Michigan regulations as here applied differ substantially from the Federal scheme for the promotion of collective bargaining. Under the Federal Act a party desiring to modify or terminate a collective agreement must so notify the employer sixty days and Federal and State mediation services thirty days prior to the expiration of the contract, must bargain collectively over the proposed modifications and must, during the sixty-day period, continue in effect without strike or lockout the terms of the existing agreement. The Michigan Act provides that, when it appears that the parties are unable to settle a dispute, notice of intention to strike or lockout must be served upon the other party and upon the State Mediation Board "not less than 10 days" before the strike is to become effective; the State Board is then authorized to mediate the dispute; when and if notified by either party that further efforts to settle the dispute by mediation would be without avail, the State Board is obliged within ten or twenty days to conduct an election among the employees in a bargaining unit which the State Board finds will "best secure to the employees their right to collective bargaining"; no strike may lawfully take

place thereafter unless in the election a majority of the employees vote to authorize a strike.

The strike in the instant case, which occurred incident to the Union's demand for modification of a collective agreement, was subject to the notice, waiting period and collective bargaining requirements of the Federal Act; the Union fully complied with all such requirements and was therefore free to strike when it did if Federal law is controlling.

To comply with the State law, the Union would have had to postpone the strike beyond the date when the period fixed by Federal law to provide "proper opportunity for mediation" ended. It would have been free to strike only if, in an election conducted by the State Board, a majority of the employees in the State defined unit voted in favor of the strike..

B. The Michigan statute is thus incompatible with the scheme of the Federal statute for the promotion of collective bargaining. At the time it enacted the Taft-Hartley Act Congress considered and rejected proposed limitations upon strikes in support of lawful collective bargaining demands which were virtually identical with the Michigan restrictions. Congress deliberately refused to condition the right to strike in support of legitimate collective bargaining demands upon affirmative vote of the employees in the appropriate unit. Congress provided such period for mediation in strike situations like this one as it

deemed proper. To permit the States to condition the right to strike upon affirmative vote of a majority of the employees, or to prolong the period for mediation, would permit the States to override the judgment of Congress as to how collective bargaining in industries covered by the Federal Act should be regulated.

The Congress which enacted the Taft-Hartley Act was aware that preservation of the right to strike is indispensable to the system of free collective bargaining. Senator Taft, commenting on the underlying philosophy of the Taft-Hartley Act, noted on the floor of the Senate that the Act was based upon the premise "that there is a right to strike and that labor peace must be based on free collective bargaining." He explained that for this reason the Committee rejected modifications of the right to strike in cases which involve "basic" questions of "wages, hours, and working conditions."

When the notice and waiting period requirements of the amended Act are fulfilled, employees who strike for higher wages are protected by Section 7 of the Act which guarantees to employees the right to engage in "concerted activities for the purpose of collective bargaining," and their status as "employees" is preserved by Section 2 (3). These provisions were carried over from the Wagner Act. Under the Wagner Act it was clear that if an employer attempted to interfere with a lawful strike in support of legiti-

mate demands either by discharging or threatening to discharge the strikers or by attempting to conduct a poll among them to ascertain how many were in favor of a strike the employer was guilty of an unfair labor practice. This Court, construing the Wagner Act, had also held that a State may not interfere with the federally protected process of collective bargaining in a manner prohibited to employers. *Hill* v. *Florida*, 325 U. S. 538. In *N. L. R. B.* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (C. A. 6), certiorari denied, 332 U. S. 762, it was held that a State could not, compatibly with the Federal Act, condition the right to strike in interstate industries upon compliance with a State imposed cooling off period.

The Michigan Act would punish employees for exercising a right preservation of which Congress deems essential to effectuation of Federal policy. Michigan would upset the balance of bargaining power established by Congress by allowing employers in that state to gamble that the union will lose the state conducted strike vote. Michigan would punish by criminal sanctions and restrain by injunction the very conduct which Congress declared could not serve as a basis for terminating the strikers' status as employees. In these respects there is clear conflict between the Michigan Act and the Federal Act.

C. The notice, waiting period and strike vote provisions of the State Act operate in a field preempted by the National Act. In the Taft-

Hartley Act, Congress regulated fully the subject matter of collective bargaining and imposed such conditions precedent to strikes in support of lawful demands as it deemed proper. Congress imposed notice and waiting period limitations where it deemed such limitations desirable. Congress also made use of strike votes to the extent it deemed this technique of regulation meritorious. Congress intended that its regulation of the field of collective bargaining in interstate industry should be exclusive.

The State regulations, which, in part, duplicate the functions of the National Act, and, in part, go further than Congress saw fit to go, operate in an area which Congress deliberately foreclosed to the States.

II

Application of the Michigan Statute is incompatible with Federal policy with respect to determination of bargaining units by the National Board. The National Act contemplates that all employees in the federally established bargaining unit shall be free to act together and simultaneously in collective bargaining and related activities, including strikes, to obtain improved wages, hours, and working conditions. The federally established unit in this case includes employees in Indiana and California, as well as Michigan. Since the State Act can have only State-wide effect, its restrictions prevent the Michigan em-

ployees from acting in concert with the out-of-State employees in support of their uniform, lawful economic demands. To permit all the States to impose requirements of this character would be to subject the employees in a single bargaining unit to numerous diverse and conflicting requirements. State by State administration of strike vote requirements fragmentizes bargaining units found appropriate by the National Board and results in conflict between State and National Board findings concerning the appropriate bargaining unit.

III

Since the matters which the State has here attempted to regulate are subject to regulation by the National Board, and since the strike here involved, having met the procedural requisites of the Federal Act, was lawful and protected by that Act, the holding of this Court in *U. A. W.* v. *Wisconsin Employment Relations Board,* 336 U. S. 245, does not support the exercise of jurisdiction by the State.

ARGUMENT

THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, PRECLUDES MICHIGAN FROM APPLYING ITS STRIKE VOTE STATUTE TO THE STRIKE HERE INVOLVED

A. THE PRACTICAL DIFFERENCES BETWEEN THE NATIONAL ACT AND THE MICHIGAN STATUTORY SCHEME

Section 8 (d) of the National Labor Relations Act, as amended, defines in detail the "duty to

bargain collectively" which is imposed upon both employers and labor organizations by the National Act. Section 8 (d) provides, *inter alia*, that "where there is in effect a collective bargaining contract covering employees in an industry affecting commerce," a party desiring to terminate or modify such agreement must notify the other party sixty days prior to the expiration date or, in the absence of an expiration date, sixty days prior to the time it is proposed to make such termination or modification; must notify both the Federal and State conciliation agencies within thirty days after the initial notice; and must continue in effect, without strike or lock-out, the terms of the existing agreement for sixty days following the original notice or until the contract expires.

At the time the Union put into effect a strike at the Company's plants on May 12, 1948, all conditions precedent involving notice, bargaining and mediation required by the National Act had been met, and the strike was entirely lawful under Federal law. The National Labor Relations Board had determined that a unit composed of the employees at the Company's ten Michigan, three Indiana and one California plant was appropriate and had certified the Union as the exclusive bargaining representative of the employees in this unit. *Chrysler Corp.*, 42 NLRB 1145. The strike was called as a result of a dispute over wages between the Company and the Union arising during the negotiation of

modifications of a contract entered into on April 26, 1947, and covering the unit found appropriate by the National Board (R. 14, 81). This contract was terminable at the option of either party on April 26, 1948 (R. 14, 115–116). About the middle of February 1948, and sixty days prior to April 26, 1948, the Union gave the Company notice of its proposed modification of the wage provisions of the contract (R. 8).

On March 11, 1948, no agreement respecting wages having been reached, the Union notified the Federal Mediation and Conciliation Service and the Michigan State Labor Mediation Board of the existence of the dispute (R. 8, 21–22). Thereafter the Union and the Company continued in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract until both its expiration date and the lapse of sixty days after the first notice had occurred (R. 15–16). During this period and for two weeks thereafter the Union and the Company, with the assistance of both Federal and State mediators and conciliators, bargained collectively with respect to the wage dispute (R. 11–12, 15–16). On May 11, 1948, the efforts at mediation and conciliation had been exhausted and the negotiations between the Company and the Union reached an impasse (R. 12–13, 17–18, 33).

Having complied with all the requirements of the National Act, the Union was on May 11, 1948,

free to strike in support of the employees' wage demands, if Federal law was controlling. The strikers would retain their status as employees (Section 2 (3)), and would be protected against unfair labor practices. Had the Company discharged any employee for so striking it would have been guilty of an unfair labor practice under Section 8 (a) (3) of the National Act, as amended. Had the Company in any other manner interfered with, restrained or coerced its employees in the exercise of their right to strike (Section 7) it would have been guilty of an unfair labor practice under Section 8 (a) (1) of the National Act, as amended.[2] Indeed, if the Company had attempted to conduct a strike vote of its own among the em-

[2] *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344–348 (refusal to reinstate leaders of an economic strike); *National Labor Relations Board* v. *Remington Rand, Inc.*, 130 F. 2d 919, 928 (C. A. 2) ("Respondent, by its immediate discharge of the strikers and attempted abnegation of the employment relationship, was guilty of an unfair labor practice"); *Firth Carpet Co.* v. *National Labor Relations Board*, 129 F. 2d 633, 635 (C. A. 2) (refusal to reinstate employees because they engaged in a strike); *National Labor Relations Board* v. *Sandy Hill Iron & Brass Works*, 165 F. 2d 660, 663 (C. A. 2) (discharge of employees for striking); *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. 2d 167, 176 (C. A. 3) ("respondent attempted to terminate the employee status of its striking employees simply because they went on strike"); *Home Beneficial Life Ins. Co.* v. *National Labor Relations Board*, 159 F. 2d 280, 285 (C. A. 4), certiorari denied, 332 U. S. 758 ("an employer who denies further employment to employees merely because they have taken part in a strike performs an unlawful act"); *National Labor Relations Board* v. *Good Coal Co.*,

ployees, after the Union had notified the Company that it proposed to strike, this action by the Company would have been held to be an unfair labor practice. *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 865, 870 (C. A. 2), certiorari denied, 304 U. S. 576. In the *Remington Rand* case, after the Union had conducted a strike vote among its members and announced that it proposed to strike, the Company attempted to conduct a strike vote of its own. The court held not only that by attempting to conduct the vote the company violated Section 8 (1) of the Act, but that the employees were

110 F. 2d 501, 502, 503 (C. A. 6), certiorari denied, 310 U. S. 630 (discharge for striking); *Carter Carburetor Corp.* v. *National Labor Relations Board*, 140 F. 2d 714, 717–718 (C. A. 8), (discharge for striking); *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 118 F. 2d 874, 886–887 (C. A. 1), certiorari denied, 313 U. S. 595 (employer's effort to defeat strike by offering individual contracts to strikers and attempting to discredit union and refusing to bargain); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. 2d 780, 790–791 (C. A. 9) (employer's attempt "to influence public opinion and break down the morale of the strikers," coupled with acts of intimidation and violence to break up picket line and defeat strike); *Eagle-Picher Mining & Smelting Co.* v. *National Labor Relations Board*, 119 F. 2d 903, 910 (C. A. 8) (company instigation of violence against strikers); *National Labor Relations Board* v. *Moltrup Steel Products Co.*, 121 F. 2d 612, 616 (C. A. 3) (formation of company union as part of back-to-work movement); *Birmingham Post Co.* v. *National Labor Relations Board*, 140 F. 2d 638 (C. A. 5) (supervisors "active in endeavoring to break the strike"); *National Labor Relations Board* v. *Lettie Lee, Inc.*, 140 F. 2d 243 (C. A. 9) (direct appeal to strikers individually to return to work); *National Labor Relations Board* v. *Mont-*

within the scope of the Act's protection when they interfered with the holding of the company conducted election, and that the company further violated Section 8 (3) of the Act when it discharged the employees for so interfering with the conduct of the election. Speaking through Judge Larned Hand, the court said:

> * * * it is plain, we think, that after an exclusive bargaining unit [agent] has taken a strike vote, it is an active interference with the exercise of its right to "bargain collectively" for the employer to undercut its authority by a vote of his own. The only possible reason for doing this is to show that the union's vote does not truly represent the men's wishes; it is to go over the heads of the representatives to their constituents; to discredit them as representatives, to destroy their power to bargain as such. The members of the Joint

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gomery Ward & Co., 133 F. 2d 676, 680–682 (C. A. 9) (employer contacted individual employees in effort to induce them to abandon strike. "This attempt to deal individually with the employees at a time when a strike was in progress, apparently the result of unproductive efforts in collective bargaining, is within the prohibition of Section 8 (1) of the Act;" quoting with approval the language of the Court of Appeals for the Second Circuit in *National Labor Relations Board* v. *Remington Rand, Inc.*, set forth in text above); *National Labor Relations Board* v. *Rock Hill Printing & Finishing Co.*, 131 F. 2d 171 (C. A. 4) (employees induced not to join strike by promise of increased wages and five year individual employment contracts); *Valley Mould & Iron Corp.* v. *National Labor Relations Board*, 116 F. 2d 760, 762 (C. A. 7), certiorari denied, 313 U. S. 590 (employer threatened not to reemploy strikers who did not abandon strike).

> Board were therefore, within their rights when they sought without violence to prevent this vote from being taken, and the respondent in selecting them for discipline because they did so, was discriminating against them under Section 8 (3) * * *.

On May 11, 1948, after it became known that a strike was imminent, the Union received a telegram from the chairman of the Michigan State Labor Mediation Board advising that "any work stoppage at Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended" (R. 11–12, 39–40). The Michigan statute cited in the telegram, if applicable to the strike here involved, does, as the telegram advises, make the strike illegal. By its terms it would apply to the strike here involved and would subject any person, who individually, or as one of a group, instigated, called or caused the strike, to a fine of not more than $1,000 or to imprisonment in the county jail for not more than six months or to both such fine and imprisonment. Section 22. Moreover, the strike could have been enjoined by a state court at the instance of the Michigan State Labor Mediation Board or the Company. Section 22a. In order to have met the requirements of the Michigan Act for a legal strike the Union would have had to postpone the strike, participate in a State proceeding to determine the bargaining

unit, participate in a State-conducted election in such bargaining unit, and secure the authorization of the strike by a majority of the employees in such unit.

Section 9 of the Michigan Act provides that "no strike or lockout shall take place" unless its requirements are met. These requirements are that the "employees or their representative" in the case of any impending strike shall serve both the Michigan State Labor Mediation Board and the employer with notice of the dispute together with a statement of the issues involved "not less than 10 days" before the strike is to become effective. This notice may not be given until it appears that "the parties thereto are unable to settle any dispute." Section 9 (1). Upon receipt of such notice the State Board is authorized to mediate the dispute. Section 9a provides that when it appears to either party that "further efforts to settle [the dispute by mediation] would be without avail" such party is authorized to so notify the Board. The State Board is then obliged to "determine such a bargaining unit as will best secure to the employees their right of collective bargaining" (Section 9e) and to conduct an election among the employees in such unit, if practical, within ten days after the receipt of such notification, otherwise within twenty days. Section 9a. The State Act provides that "It shall be the duty of both employees and employer to avoid a cessation of employment * * * dur-

ing the entire period in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a." Section 9b.

In order to comply with the Michigan Act the Union would have to postpone the strike beyond the date when it first became permissible under Federal law. This occurs because the notice requirements of the State law begin to run only from the time the parties reach an impasse, whereas under Section 8 (d) of the Federal Act the time when notice must be given is not fixed by reference to the inability of the parties to settle a labor dispute, but rather by reference to the expiration date of contracts or the date on which a proposed termination or modification of a contract is to be put into effect. Thus, in the instant case, in the middle of February 1948 (R. 8), more than sixty days before April 26, 1948, the termination date of the contract (R. 14, 115–116), the Union gave the notice of proposed modification of wage provisions and on March 11, 1948 (R. 9, 21–22), more than thirty days prior to the termination date, gave notice to the Federal and State mediation services. Having bargained in good faith, availed itself of the Federal and State mediation services, and continued in effect the contract without strike until its termination date, April 26, 1948, the Union was free to strike on April 27, 1948 if the Federal law governed. But under State law, only when the parties on May 11, 1948 exhausted their

ability to settle the dispute without a strike, did the State notice and waiting periods first become applicable. At the very time the waiting period established by Congress to provide "proper opportunity for mediation" ended, leaving the parties free to strike or lockout, the provision of State law, if valid, intervened and required at least postponement of such action for an additional ten or twenty days and perhaps even abandonment if a majority of the employees in the Michigan determined unit did not vote to authorize it. Whereas under Federal law the Union was free to strike on April 27, 1948, or any time thereafter, and did strike on May 12, 1948, if it had complied with State law the strike would have had to be postponed until such time as the Michigan Board during the ensuing twenty days conducted an election and determined that a majority of the employees in such unit as the Michigan Board should establish authorized the strike.[3]

The Michigan Act provides that "if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for col-

[3] The exact number of days of postponement which would result is impossible to determine. The Michigan State contemplates a first ten day notice when the parties are unable to settle their dispute, a second notice after ensuing mediation efforts fail and an election within ten days after the second notice if practical, otherwise within twenty days after the second notice. Sections 9 (1) and 9a of the Michigan Act.

lective bargaining, the board shall adopt such unit." Section 9e. In the instant case the National Board had determined the appropriate unit for the employees involved in the dispute. It was composed of fourteen of the Company's plants, ten located in Michigan, three in Indiana and one in California. *Chrysler Corp.*, 42 NLRB 1145. This was the unit covered by the contract which the Union and the Company were negotiating (R. 14, 81, 85). Obviously, the Michigan Board could not conduct an election among the employees in four of the plants in the unit, to wit, the three plants in Indiana and the one in California. The record is silent as to what unit or units the Michigan Board would utilize for conducting the elections in a situation such as this. Whether the Michigan Board would treat the unit as all the employees in Michigan who are within the unit fixed by the National Board, or each of the plants which are located in Michigan, or some other unit, is conjectural. It is clear, however, that because of the interstate character of the unit here involved the Michigan Board would be powerless to conduct a poll of all of the employees in the unit covered by the contract to determine whether a majority wish to strike. If the Union had submitted to the election requirements of the Michigan Act it would have been acquiescing in having the right to strike of its members within the multi-state unit conditioned on determination by the Mich-

igan Board of the wishes of those portions of the unit located in Michigan.

B. THE MICHIGAN ACT IS INCONSISTENT WITH THE SCHEME ADOPTED BY CONGRESS WITH RELATION TO COLLECTIVE BARGAINING AND STRIKES

1. *The Michigan statute interferes with the right to strike in circumstances where Congress considered freedom to strike indispensable to free collective bargaining*

The Federal policy of encouraging collective bargaining rests upon coordinate premises that the way to prevent strikes is not by making them illegal when they are utilized for securing legitimate bargaining demands, but by rendering resort to strikes less frequent because both parties at the bargaining conference know the demands put forth can be backed by legal resort to economic sanctions. For genuine collective bargaining depends upon two parties each having some real power with which to support its bargaining position. The Taft-Hartley Act expressly permits a strike for better wages, hours or other conditions of employment at the end of a contract period when, during the sixty days prior to the contract's termination, the Union has observed the contract, bargained collectively over proposed modifications, and given the proper notices to the employer, and Federal and State mediation services. Senator Taft, during the debates which preceded enactment of the amended Act, pointed out that the right to strike over wages, hours, and

working conditions was essential to our system of society.[4] He stated (93 Cong. Rec. 3835):

> Basically, I believe that the committee feels, almost unanimously, that the solution of our labor problems must rest on a free economy and on free collective bargaining. The bill is certainly based upon that proposition. That means that we recognize freedom to strike when the question involved is the improvement of wages, hours, and working conditions, when a contract has expired and neither side is bound by a contract * * *.
>
> We have considered the question whether the right to strike can be modified. I think it can be modified in cases which do not involve the basic question of wages, hours, and working conditions. But if we impose compulsory arbitration, or if we give the Government power to fix wages at which men must work for another year or for two years to come, I do not see how in the end we can escape a collective economy. * * *
>
> * * * * *
>
> If we begin with public utilities, it will

[4] Ira Mosher, Chairman of the Executive Committee of the National Association of Manufacturers, testified to the same effect in the Hearings before the Senate Committee on Labor and Public Welfare on S. 1126, 80th Cong., 1st Sess., pp. 940, 950. He said: "we have to preserve the right to strike if we are going to have good faith collective bargaining over wages, hours, and working conditions * * *. If a legitimate difference of opinion over wages, hours, or working conditions cannot be reconciled through collective bargaining or mediation employees should be free to strike when such strike is not in violation of an existing agreement."

be said that coal and steel are just as important as public utilities. I do not know where we could draw the line. So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours, and working conditions after proper opportunity for mediation.

* * * * *

We did not feel that we should put into the law, as a part of the collective-bargaining machinery, an ultimate resort to compulsory arbitration, or to seizure, or to any other action. We feel that it would interfere with the whole process of collective bargaining. If such a remedy is available as a routine remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process than it would receive in collective bargaining, and it will back out of collective bargaining.

Studies of collective bargaining uniformly point out that the right to strike is in an indispensable prerequisite to the process.[5] A committee of

[5] John B. Clark, *The Theory of Collective Bargaining*, American Economic Ass'n. Quar., April 1909, pp. 26, 28; E. E. Cummins, *The Labor Problem in the United States*, 1935 (2nd ed.), pp. 251, 339; John A. Fitch, "*Strikes and Lockouts*," Encyclopedia of the Social Sciences, 1934, Vol. XIV, p. 420 ff.; E. T. Hiller, *The Strike*, 1928, p. 206; David A. McCake and Richard A. Lester, *Labor and Social Organ-*

prominent industrialists, labor leaders and government officials recently stated:[6]

> Those processes [the processes of collective bargaining] lose all color of reality if the workers have not the right to reject management's offer and quit, or if management has not the right to refuse the workers' terms and close the plant. It is the overhanging pressure of this right to strike or lockout that keeps the parties at the bargaining table and fixes the boundaries of stubbornness in the bargaining conferences. It sets the limit upon the aggressive and emotional conduct of the negotiations and dominates the situation in the final moments of responsible decision. Unless the negotiating parties are faced with this possibility of a strike or a lockout, and are forced to examine and accept the consequences of their own decision, they are free from the responsibility that makes genuine collective bargaining possible and produces through it creative results.

The statement by Senator Taft, quoted above (*supra*, p. 23–24), makes it clear that the Congress which enacted the amended Act believed that any "modification" of the right to strike for im-

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ization, 1938, pp. 107–108; Malcolm, Keir, *Labor's Search for More*, 1937, p. 18; National Labor Relations Board, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (Gov't. Print. Off., 1940), pp. 8, 10–11.

[6] The Twentieth Century Fund, Labor Committee, Strikes and Democratic Government (1947), pp. 13–14.

proved wages, hours or working conditions, when contracts were not in effect and "after proper opportunity for mediation," would impair the system of free collective bargaining which it was the policy of the Federal government to preserve and to foster.

(a) Congress rejected as undesirable proposed limitations on the right to strike which were identical with the Michigan limitations

One of the "modifications" of the right to strike which Congress considered and rejected was a strike vote provision such as is provided in the Michigan Act. The possibility of having the federal body utilize local agencies to conduct strike votes was suggested to Congress by the House Committee in the course of its discussion of a proposal for strike votes (H. Rep. No. 245 on H. R. 3020, 80th Cong., 1st Sess., p. 22). The House bill did not include such a provision, but instead H. R. 3020, as it passed the House, contained in its definition of collective bargaining, provisions which declared *inter alia* (Section 2 (11) (B) (VI)), that if a dispute arose when no collective bargaining contract was in effect, the collective bargaining representative, before "authorizing, conducting, or participating" in any strike in connection with the dispute, must notify the Administrator[7] of its desire to have a strike vote

[7] The position of Administrator, contemplated in H. R. 3020, emerged in the final Act as the office of General Counsel, Section 3 (d) of the Act, as amended.

conducted. The Administrator was directed "within a reasonable time thereafter" to "provide for a secret ballot of the employees in the bargaining unit concerned on the question whether such employees desire to reject the employer's last offer of settlement and to strike." Subsection (h) of Section 2 (11) (B) (VI), provided that "a * * * strike may not be authorized or conducted unless in such secret ballot a majority of the employees in the bargaining unit concerned vote to reject the employer's last offer of settlement, and to strike." Violation of this obligation by a labor organization was defined as an unfair labor practice by Section 8 (b) (2). In addition, Section 8 (c) (8), declared it to be an unfair labor practice to "direct or call a strike or make any request to the Administrator under section 2 (11) for a strike ballot, unless at least a majority of those voting on the question have * * * authorized such action."

At the hearings before the Senate Committee witnesses repeatedly urged that similar provisions be included in the Senate bill (See, *e. g.*, Hearings before the Senate Committee on Labor and Public Welfare, 80th Cong., 1st Sess.; Governor Stassen, pp. 562–565, 567, 570, 574–575, 577–578, 586; Charles Kuzzell, pp. 673–678; T. G. Graham, pp. 879, 887; Ira Mosher, pp. 940–942). Among the justifications offered for the proposal was the fact that, "Presently strike votes are conducted by

the union and only union members are permitted to vote, although the issues involved and the results of the strike vote affect all members of the bargaining unit in the same degree" (Hearings, *op. cit. supra,* Graham, p. 879; see also, Kuzzell, pp. 675–676, Mosher, p. 940; vf. H. Rep. No. 245 on H. R. 3020, p. 22). The witnesses, for this reason, recommended that after an impasse is reached in collective bargaining negotiations an election be conducted under governmental auspices on the question whether the employees desired to accept the employer's final offer, and that only if a majority of the employees in the bargaining unit voted to reject the offer could a strike lawfully proceed.[8]

Members of the Senate Committee voiced disagreement with the proposal. Senator Ball, in a colloquy with Governor Stassen, pointed out (Hearings, *op. cit. supra,* p. 565): "That seems to me a very drastic restriction on the right of the union to strike. You are saying now a majority vote of the employees, not the union?

[8] Governor Stassen, one of the leading proponents of the plan, differed from other witnesses inasmuch as he proposed that the election be conducted by the Union, in the presence of employer and governmental observers. Hearings, *op. cit. supra,* p. 566. He also suggested that the proposal be enforced by "taking away * * * the right of the employees under the Wagner Act if they conduct an illegal strike, and by provision of misdemeanor penalties against those who order, promote and incite strikes." In response to Senator Ball's question: "You would not permit the employer to get a injunction?", Governor Stassen replied, "By no means." Hearings, *op. cit. supra,* p. 565, see also 580–583.

Governor STASSEN. That is right.

Senator BALL. That means if the union has 55 percent they have practically got to get a unanimous vote in order to go on strike. * * * It seems to me that except in the case where the union has a closed shop, a closed union shop, that is an extremely drastic restriction of the right to strike.

Governor STASSEN. It would be a drastic provision, Senator, if your provision as to a closed union shop were adopted, but I am approaching it on a different basis * * *.

Later, in a colloquy with Mr. Mosher, Senator Ball reiterated these views (*ibid.*, pp. 940–941), and added (p. 941):

It seems to me if you eliminate the closed shop and industry wide bargaining, that you should leave the union free. You put a sufficient check on arbitrary leadership's decisions without any reference to what the rank and file thinks, if you get rid of secondary boycotts and the closed shop. I do not like to have the Government go in and supervise elections and all that business. It seems to me it is headed in the direction of intervention. You eliminate the closed shop and leadership is going to be a little more careful about calling a strike unless they are pretty sure they have the men back of them.[9]

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[9] Compare H. Minority Report No. 245 on H. R. 3020, p. 70, in which the strike vote provision was objected to, *inter alia*, on the ground that its effect was "to interject the Federal Government still further into the bargaining process."

Senator Thomas suggested that the proposal amounted to an attempt to give representation to the minority in a bargaining unit, and noted that to adopt it would undercut the principle of majority rule (Hearings, *op. cit. supra,* pp. 675–676). Senator Morse, referring to his experience with the National War Labor Board, indicated that a provision for compulsory strike votes after an impasse had been reached in bargaining might tend to destroy collective bargaining, since it would give the employer an incentive to refrain from making concessions in the hope that the employees might ultimately vote to refrain from striking. He said (*ibid.,* p. 677):

> * * * we have to watch out when drafting labor legislation that we do not lay out some very nice looking procedure and overlook the fact that it is the procedure in the last step that is usually going to be controlling. They are going to see what the chances are along the line. * * * We had thousands, and I mean thousands, of cases in which there was no attempt to settle the dispute between the parties. Why? Well, because you could always go up to the War Labor Board and take your chances there.
>
> So I look somewhat askance at a procedure that encourages them to hold off and hold off with the thought that "maybe we will get something from the last resort."

Senator Pepper indicated that it would be inequitable to require the employees to vote on the

employer's last offer as a condition to striking when the stockholders of the corporation were not being afforded an opportunity to vote on whether to accept the union's offer rather than face a strike (*ibid.*, pp. 586–587).

The bill reported by the Senate Committee (S. 1126), contained a definition of collective bargaining in Section 8 (d) which did not include the suggested provision for strike votes. Section 8 (d), as reported by the Committee, passed the Senate and its provisions, rather than those of the House Bill, were accepted by the Conference Committee (H. Conf. Rep. No. 510, on H. R. 3020, pp. 34–35), and ultimately enacted into law.

Rejection by Congress of the proposal that Section 8 (d) be expanded to comprehend the obligations here imposed by State law, and its adoption of notice and waiting period requirements only in the limited class of disputes to which Section 8 (d) refers, establish that Congress considered supplementary restraints of that character upon the collective bargaining process neither desirable nor necessary. This inference is strengthened by the fact that in the Labor Management Relations Act, Sections 203 (c), 206–210, Congress also made use of the strike vote device for other types of cases. Compulsory use of strike votes was restricted to situations in which strikes would imperil the National health, safety and welfare. Even there the right to strike was nc conditioned upon securing majority approval in the election. (Sections 206–210.) Strike ballots

on the employer's last offer of settlement were also referred to in Section 203 (c) as a possible technique which might be utilized by the Federal Mediation and Conciliation Director. However, even this Section states in terms that: "The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act." This provision indicates Congress' concern lest the collective bargaining process be affected, in other than emergency situations, by compulsory provision for strike votes. Such careful selection by Congress of the situations and circumstances in which the techniques of regulation embodied in the Michigan Act should apply, when considered together with the foregoing legislative history concerning rejection of proposed modifications of the right to strike, show that Congress did not believe that the right to strike in national industries should be limited by the kind of regulation which Michigan has imposed.[10]

(b) Congress intended that upon compliance with the notice and waiting period limitations of Federal law employees should be free to strike

The legislative history also indicates, as does the amended Act on its face, that Congress intended that upon compliance with the notice and

[10] Senator Taft also pointed out (93 Cong. Rec. 6445–6446) that "the conferees rejected the broad prohibition of all kinds of strikes. * * * The only strikes which are declared to be illegal are secondary boycotts and jurisdictional strikes."

waiting period requirements of Section 8 (d), labor organizations should be free to strike in support of lawful collective bargaining demands. The Michigan Act, by imposing additional limitations and restrictions upon the freedom to strike after compliance by a labor organization with the provisions of Section 8 (d), defeats the intention of Congress and is clearly inconsistent with Federal policy.

Moreover, the strike vote provisions aside, the notice and waiting period limitations of the Michigan Act, as applied to strikes arising over disputes concerning modification or termination of collective agreements, are inconsistent with the notice and waiting provisions of Section 8 (d). (See pp. 19–20, *supra*.) The State Act may serve to prolong beyond the period which Congress deemed "proper" (see statement of Senator Taft, p. 24, *supra*), the time during which strikes arising over contract disputes may not occur.

The Taft-Hartley Act, with its specific provisions respecting strikes, is even clearer than was the Wagner Act that Congress intended that strikes such as the one here involved should be conducted without governmental interference. But even under the Wagner Act both by reason of its statutory provisions and by reason of Board and court decisions, it was well settled that the right to strike was not impaired, but, on the contrary, to a considerable extent, protected. Section 7 of the Wagner Act affirmatively declared

that "employees shall have" certain rights. These were the rights "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." Section 8 (1) of that Act protected the exercise of these employee rights against interference and coercion by employers.[11] Section 2 (3) of the Wagner Act specifically assured to strikers that their status as employees would not be impaired. It provided that the term "employee" shall "include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute * * *, and who has not obtained any other regular and substantially equivalent employment."[12] Section 13 of the Wagner Act provided "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike." Section 13, in the words of the Senate Labor Committee, was intended to constitute "an affirmative declaration of the right to strike."[13]

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[11] Section 8 (b) (1) of the Act, as amended, also protects the exercise of the rights guaranteed in Section 7 against restraint or coercion by labor organizations.

[12] The Taft-Hartley Act made no change in Section 2 (3) insofar as it applies to strikers. Section 8 (d) of the amended Act removes employee status from individuals who strike in violation of that section.

[13] Senate Labor Committee, Memorandum dated March 11, 1935, Comparing S. 2926, 73d Cong., 2d Sess., with S. 1958,

The reason for so specifically protecting the rights of strikers, as the Senate Committee which reported on the bill which became the Wagner Act noted (S. Rep. No. 573, 74th Cong., 1st Sess., p. 6), was that "To hold otherwise for the purposes of this bill would be to withdraw the Government from the field at the very point where the process of collective bargaining has reached a critical stage."[14]

74th Cong., 1st Sess., reprinted in Legislative History of the National Labor Relations Act of 1935, Vol. I (Govt. Print. Off., 1949); p. 1371.

[14] The Ball bill, S. 360, 80th Cong., 1st Sess., proposed to remove the protection of strikers contained in Section 2 (3) of the Act. At the hearings before the Senate Committee on S. 1126, Charles R. Kuzell, representing the American Mining Congress, urged adoption of this provision as an amendment to the Wagner Act. He said, p. 693: "The National Labor Relations Act now provides that employees on strike continue to remain employees. This provision, coupled with the National Labor Relations Board's zeal to protect a strike from any interference by an employer, has cushioned the strike by making it almost certain to the employees that they will not lose their jobs if they strike. It is an unfair labor practice for an employer to be in any way connected with a back-to-work movement.

"S. 360 wisely provides that a striking employee loses his status as an employee if he has been replaced, or has refused an offer of reinstatement to substantially equivalent employment. Such a provision enables an employer to start up his plant and for the first time in many years be able to notify his employees that if they do not return by a certain date their employment will be terminated. The restoration of this right will again cause the union and the employees to weigh the risks of a strike as carefully as an employer must do."

The proposal was rejected and Section 2 (3) was continued in the amended Act without material change. Cf. H. Rep. No. 245 on H. R. 3020, p. 22.

The Congress which enacted the Wagner Act was conscious of the need for according recognition to the right to strike in the statute designed to establish and foster the system of collective bargaining. The Wagner Act succeeded Section 7 (a) of the N. I. R. A. (15 U. S. C. 701, *et seq.*), which also had guaranteed to employees the right to organize and bargain collectively through representatives of their own choosing. In a memorandum dated March 11, 1935,[15] comparing S. 2926, 73rd Cong., 2d Sess., with S. 1958, 74th Cong., 1st Sess., the Senate Labor Committee quoted with approval the following holding of the Court of Errors and Appeals of New Jersey in *Bayonne Textile Corp. v. American Federation of Silk Workers*, 116 N. J. Eq. 146, 172 At. 551, 554, construing the earlier Act:

> The right to organize and bargain collectively connotes the right to strike in event that such course is deemed advisable by the employees for their mutual aid or protection. The latter is an incident of, and imparts efficacy to, the former. It cannot be that Congress intended to reserve the right of collective action, in respect of wages, and to deprive the employees of the only weapon at their command to make its exercise effective—a lawful weapon devised

[15] The document is reprinted in Legislative History of the National Labor Relations Act of 1935, Vol. I (Govt. Print. Off., 1949), pp. 1319, 1344, 1346.

> to secure the enforcement of a fundamental right. A construction that would deny to the employees the privilege of striking, to enforce what they conceive to be a just demand for a wage increase, would emasculate and devitalize the clause conferring the right to organize and bargain collectively. The denial of this long-established fundamental right to strike would, in effect, compel acceptance of the scale of wages fixed by the employer.

Witnesses who testified in support of the bill (S. 2926, 73rd Cong., 2nd Sess.) which was the predecessor of the bill which became the Wagner Act, expressed the conviction that the bill "makes proper provisions for guaranteeing labor the right to strike, a right that labor cannot possibly give up under any conditions,"[16] and that "this bill explicitly safeguards this right [to strike]."[17]

Giving effect to the language of the Act and the legislative history, the Board and the courts have uniformly held that the right of employees to strike in aid of lawful collective bargaining demands was affirmatively recognized by the Wagner Act.[18] As this Court stated in *National Labor*

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[16] Testimony of Sidney Hillman on S. 2926, reprinted in *Legislative History, op. cit., supra*, note 15, p. 153.

[17] Testimony of Dr. Paul F. Brissenden on S. 2926, *op. cit. supra*, note 15, p. 246.

[18] *American Mfg. Co.*, 5 NLRB 443, enforced, 106 F. 2d 61, 67-68 (C. A. 2), affirmed, 309 U. S. 629; *Carter Carburetor Corp.* v. *National Labor Relations Board*, 140 F. 2d 714, 718

Relations Board v. *Fansteel Corp.*, 306 U. S. 240, 256:

> * * * Congress also recognized the right to strike,—that the employees could lawfully cease work at their own volition because of the failure of the employer to meet their demands. Section 13 provides that nothing in the Act "shall be construed so as to interfere with or impede or diminish in any way the right to strike." But this recognition of "the right to strike" plainly contemplates a lawful strike,—the exercise of the unquestioned right to quit work. As we said in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 347, "if men strike in connection with a current labor dispute their action is not to be construed as a renunciation of the employment relation and they remain employees for the remedial purposes specified in the Act."

In *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (C. A. 6), en-

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(C. A. 8); *National Labor Relations Board* v. *Western Cartridge Co.*, 139 F. 2d 855, 858 (C. A. 7); *Home Beneficial Life Ins. Co.* v. *National Labor Relations Board*, 159 F. 2d 280, 284–285 (C. A. 4), certiorari denied, 332 U. S. 758; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. 2d 167, 176 (C. A. 3); *National Labor Relations Board* v. *Remington Rand*, 94 F. 2d 862, 871 (C. A. 2), certiorari denied, 304 U. S. 576; *Berkshire Knitting Mills* v. *National Labor Relations Board*, 139 F. 2d 134, 140–141 (C. A. 3), certiorari denied, 322 U. S. 747; *National Labor Relations Board* v. *Ohio Calcium Co.*, 133 F. 2d 721, 726 (C. A. 6); *National Labor Relations Board* v. *Clinton Woolen Mfg. Co.*, 141 F. 2d 753, 756 (C. A. 6); *United Aircraft Mfg. Co.*, 1 NLRB 236, 252; *Columbia Pictures Corp.*, 64 NLRB 490, 514–515.

forcing 66 NLRB 930, 931, certiorari denied, 332 U. S. 762, the Court of Appeals for the Sixth Circuit held that a Michigan statute (predecessor to the State statute here involved), which outlawed strikes unless preceded by service of a notice and observance of a waiting period, could not constitutionally be applied to employees subject to the National Act. In that case the employer discharged employees for leading a strike where no notice had been given as required by the State Act. The employer contended that since the strike was in violation of the State Act it was not protected by Section 7 of the National Act, and that the discharge of the strikers therefore did not violate Sections 8 (1) and (3) of the National Act. The court rejected the contention that State law could in this fashion restrict the scope of protection accorded by Section 7. It pointed out that "The Federal Act does not require the giving of notice of a pending dispute followed by a cooling off period" as a condition precedent to strikes, and concluded, citing *Hill* v. *Florida*, 325 U. S. 538, that State imposition of such conditions unconstitutionally "impairs, qualifies [and] subtracts from" rights guaranteed by the National Act (160 F. 2d at 471).

Section 13 of the amended Act cannot be construed as authorizing imposition by the States of such limitations upon strikes in interstate industries. As it appeared in the original Act, Section 13 provided merely that "Nothing in this Act shall

be construed so as to interfere with or impede or diminish in any way the right to strike." The section was designed to insure that the provision in the Act for an administrative method of settling unfair labor practices would not be held by negative implication to preclude employees from striking to secure similar relief (*supra*, pp. 36–37).[19] The addition in Section 13 of the amended Act of the phrase "or to affect the limitations or qualifications on that right," was likewise inserted only to foreclose implications that since only certain types of strikes were in terms made unlawful by the amended Act, other types of strikes which Section 7 had theretofore been held not to protect, would now come within the protection of the statute. S. Rep. No. 105 on S. 1126, p. 28; H. Conf. Rep. No. 510, on H. R. 3020, p. 59. Unlike Section 14, Section 13 does not deal at all with the relation of State power to Federal regulation in the field covered by the Act; it announces a rule of construction to be followed in applying the Federal Act itself, *U. A. W.* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 259.

Judicial construction of the Wagner Act had made it clear that strikes in aid of lawful collective bargaining demands were within the field of collective bargaining covered by the Federal Act, and that the right to engage in such strikes was affirmatively recognized by Section 7 (*supra*, pp.

[19] Cf. *Bayonne Textile Corp.* v. *American Federation of Silk Workers*, *supra*; testimony of Robert L. Hale on S. 2926, reprinted in *Legislative History*, *op. cit.*, *supra*, note 15, p. 83.

14–16, 37–38). Reenactment of Section 7 in the Act as amended without material change must therefore be taken as indicating Congressional approval of that construction.

(c) The prohibitions and sanctions of the Michigan Act are incompatible with the intention of Congress to permit strikes in support of legitimate collective bargaining demands, when the conditions of the Federal Act are satisfied

The prohibitions of the Michigan Act are inconsistent with the recognition which the Federal Act accords to strikes in support of legitimate collective bargaining demands. In the instant case, if the Michigan Act may validly be applied to the employees of the Company, their conduct in striking, though protected by Sections 7 and 2 (3) of the National Act, is made illegal. The obligation to refrain from striking imposed by State law cannot be reconciled with the freedom to strike recognized in the Federal law.

Moreover, whenever employers and unions meet at the bargaining table in Michigan their relative bargaining power would be put in a different balance should the Michigan Act be applicable.[20] If the Act is inapplicable the employer knows the union has a legal right to strike once Section 8 (d) has been complied with. If the Act is applicable, the employer can gamble on the in-

[20] The Senate Committee Report on the Bill which became the Taft-Hartley Act shows that Congress was concerned with maintaining "the balance of power in collective bargaining negotiations." S. Rep. No. 105, on S. 1126, p. 14.

ability of the union to win a strike vote and thus postpone genuine bargaining until after the strike vote is taken. The Michigan Act thus alters the balance of power between employers and employees upon which the Federal Act depends.

Although the sanctions of the National Act are directed against employers and unions, the language of Section 7, and the purpose of the statute as a whole, establish that the rights enumerated in Section 7 are no more to be impaired or restricted by the States than by employers and unions. This Court considered this problem under the Wagner Act and held unconstitutional a statute by which the State restricted or punished the exercise of rights protected by the National Act. *Hill* v. *Florida,* 325 U. S. 538. Mr. Chief Justice Stone in his concurring opinion stated that the rights enumerated in Section 7 were conferred "generally on employees and not merely as against the employer." 325 U. S., at 545. Cf. *Allen Bradley Local* v. *Wisconsin Employment Relations Board,* 315 U. S. 740. If the employer had attempted to interfere with the strike by conducting a strike vote himself his conduct would be held unlawful interference with rights guaranteed employees by the Act. *Remington Rand* case, *supra.* The strike vote is no less interference with federal rights when conducted by the State.

Further, if the Michigan Act may validly be

applied to the employees of the Company their conduct in striking subjected them to either a fine of not more than $1,000 or imprisonment in the county jail for not more than six months or to both such fine and imprisonment. Section 22. But discharge by an employer on account of striking results in an order of the National Board requiring reinstatement of the employees with back pay (see pp. 14–15, *supra*). If at the time the National Board ordered reinstatement the employees were in a county jail under a sentence of six months' imprisonment, the Federal remedy of reinstatement would to that extent be defeated. Compare *Hill* v. *Florida,* 325 U. S. 538, 543.

Application to the employees of the more rigorous sanctions of the State Act (compare Section 22 of the State Act with Sections 8 (d), 8 (b) (3) and 10 (a) of the National Act) would also conflict with the National policy. If the employees had struck without observing the notice and waiting periods provided in the National Act, such conduct would be an unfair labor practice remediable by the National Board, and the strikers would lose their status as employees unless reinstated by the employer. Under the State Act, as indicated above, the strike could be enjoined at the suit of the employer and the employees could be subjected to criminal penalties. In view of the care exercised by Congress

in selecting the remedies it deemed appropriate to cope with unfair labor practices, and particularly its refusal to permit private parties to obtain injunctive relief (see *Bakery Drivers Union* v. *Wagshal*, 333 U. S. 437, 442, see also p. 28, note 8, *supra*), it is not to be presumed that Congress intended to leave the States free either to accord private parties injunctive relief or to impose different and heavier penalties.[21] *Amazon Cotton Mills Co.* v. *Textile Workers Union*, 167 F. 2d 183, 186 (C. A. 4); *Gerry of California* v. *Superior Court*, 32 Cal. 2d 119, 194 P. 2d 689. Cf. *Jerome* v. *United States*, 318 U. S. 101, 105; *Southern Ry. Co.* v. *R. R. Comm. of Indiana*, 236 U. S. 439, 466; *Missouri Pacific R. Co.* v. *Porter*, 273 U. S. 341, 346.

2. *The Michigan statute regulates a subject matter which Congress has fully regulated in the National Act to the exclusion of State authority*

We believe that the foregoing establishes that the provisions of the Michigan Act as applicable to the instant case are in direct conflict with the National Act. However, even if there is no direct conflict between the two statutes, the Michigan Act operates in the field of collective bargaining which has been regulated by Congress. The extent and nature of that regulation by Congress,

[21] The affirmative rejection of stronger sanctions by Congress, as well as the many affirmative indications that Congress here intended to preempt the field, distinguishes this situation from *California* v. *Zook*, 336 U. S. 725.

as well as its legislative history, show that Congress intended to exclude the application to industries subject to the National Act of such State regulations as the Michigan Act imposes. Thus, in defining the collective bargaining obligation imposed by the National Act on employers and unions, Congress included not only the details of negotiations but also the timing and other conditions precedent to strikes in support of bargaining demands. The Act requires that notices of intent to change existing contractual relations be served, that "proper" periods for mediation be observed without strike or lockout, and deliberately preserves the freedom to strike and the status of strikers when there is compliance with these detained prerequisites (pp. 11–17, 26–41, *supra*).

The Wagner Act imposed the duty to bargain collectively only upon employers, and not upon labor organizations. The Act contained no notice or waiting period limitations or conditions upon strikes in interstate industries. It might conceivably have been argued, therefore, that restrictions such as those contained in the Michigan law did not operate in the field dealt with by Congress in the Wagner Act. But cf. *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (C. A. 6), certiorari denied, 332 U. S. 762, see also, pp. 33–39, *supra*. In the amended Act Congress extended the obligation to bargain collectively to labor organizations, and imposed

notice, waiting period and election requirements to the full extent it deemed them desirable and appropriate, *supra*, pp. 22–26. It refused, however, to incorporate in its definition of collective bargaining strike vote obligations in substance the same as those contained in the Michigan Act (*supra*, p. 26–32). Congress' mandatory requirement of the strike vote in emergency situations, and permissive use of votes on the employer's last offer in other situations (*supra*, pp. 31–32), demonstrates that Congress regarded the strike vote technique as within the field of collective bargaining regulated by the National Act, and that where it rejected the compulsory strike vote technique it did so because it deemed the requirement inconsistent with Federal policy.

This Court has repeatedly noted that the language and legislative history of the Wagner Act indicated that Congress intended to exclude State regulation from the field of collective bargaining regulated by the Act. *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *La Crosse Tel. Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U. S. 953; *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; *Hill* v. *Florida*, 325 U. S. 538, 543–544; *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301. In *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 236, this Court pointed to the

Wagner Act as an instance in which Congress acted "so unequivocally as to make it clear that it intends no regulation except its own."

In enacting the amended Act Congress continued in effect, with stated exceptions, its policy of excluding State regulations from the field of collective bargaining regulated by the National Act. Because Congress realized that "by the Labor Act Congress preempts the field that the Act covers insofar as commerce within the meaning of the Act is concerned" (H. Rep. No. 245, on H. R. 3020, p. 44), it took care to preserve to the States in so many words whatever jurisdiction it desired to permit them to retain. Section 10 (a) as amended, authorizes the States to exercise jurisdiction over cases to which the National Act applies only where "cessation of jurisdiction" has taken place; and the State law is consistent with the Federal Act. *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board,* 336 U. S. 301, 313; *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board,* 338 U. S. 953, and even this is permissible only where local industries are affected. Congress left to the states jurisdiction to impose more rigorous restrictions upon union security contracts only after extensive debate, and over objection that lack of uniformity was undesirable. 93 Cong. Rec. 6456, 6519–6520, 6532–6533. To accomplish this purpose Congress enacted Section 14 (b) which expressly reserves to the States power to prohibit the execution or

application of agreements requiring membership in a labor organization as a condition of employment. See *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301. The House Committee explained (H. Rep. No. 245, on H. R. 3020, 80th Cong., 1st Sess., p. 40), that such a "special provision" was necessary "to give to the States a concurrent jurisdiction in respect of closed shop and other union security arrangements."

Similarly, Congress, not desiring to withdraw from the States power to offer mediation and conciliation services in labor disputes affecting commerce, manifested this intention by explicitly naming such agencies in the statute and providing for cooperation between Federal conciliation agencies and those of the States. See Section 202 (c), 203 (b) and Section 8 (d) (3).[22]

[22] Congress was advised that the effect of requiring dispute notices to be filed only with the Federal Conciliator would be to exclude State conciliation services entirely from the field (Hearings before the Senate Committee on Education and Labor, 80th Cong., 1st Sess., p. 563). To avoid this result, and permit State agencies to mediate disputes "which would have only a minor effect on commerce" Congress specifically provided that notices were to be served on both Federal and State agencies; that the Director of the Federal Mediation and Conciliation Service "may establish suitable procedures for cooperation with State and local mediation agencies"; and further provided that the Federal authorities "are directed to avoid attempting to mediate disputes which have only a minor effect on commerce if State or other conciliation services are available to the parties.

A suggestion to preserve the constitutionality of State laws (in addition to those dealing with union security contracts) which operated in the field regulated by the Federal Act (93 Cong. Rec. 3559) was peremptorily abandoned when Congressman Case of South Dakota pointed out (*ibid.*) that if it were adopted "You might nullify much of the bill, because you would establish State rights to deal with all phases of industrial relations in spite of any provisions whatsoever in the Act." If Congress had desired either to repudiate the prior construction of the Wagner Act by removing strikes in aid of lawful collective bargaining demands from the field preempted by the National Act, or to exclude strike vote and waiting period provisions from the expanded field preempted by the Taft-Hartley Act (Cf. Section 13 of H. R. 3020, as it passed the House) it would have said so.

In sum, the provisions of the Michigan law here in issue operate in the field of collective bargaining, a field concerning which Congress, both in the initial Act and in the amended Act, expressed the conviction that uniformity of regulation was imperative (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 9; H. Rep. No. 245, 80th Cong., 1st Sess., p. 40). In this field Congress left no room for imposition by the States of similar or additional regulations. *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board,* 338 U. S. 953; *Bethlehem Steel Co.* v. *New York State Labor Relations Board,* 330 U. S. 767, 775–776; *Rice* v.

Santa Fe Elevator Corp., 331 U. S. 218, 236; *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301, 306, 313.

To the extent that the function of the State Act, as applied to disputes such as this one which involve modification of collective agreements, is to afford the State mediation board an opportunity to mediate the dispute, that function is completely performed by Section 8 (d) of the National Act, which provides what Congress considered a "proper" opportunity for mediation. If a strike had been called without giving the notice required by 8 (d), including the thirty day notice to the Michigan State Mediation Board, or without observing the waiting period therein prescribed, the Union would have been guilty of an unfair labor practice under Section 8 (b) (3) of the National Act, and the strikers would have lost their status as employees unless reinstated by their employer (Section 8 (d)). A State could not duplicate the National Act by making such conduct also an offense under State law, nor could it authorize a State agency to duplicate the work of the National Board in remedying the infraction. *Plankinton Packing* case, *supra*.

To the extent that the provisions of the State Act apply notice and waiting period requirements to all disputes, and prohibit all strikes absent affirmative vote of a majority of the employees in a State conducted poll, the requirements go

further than Congress saw fit to go. But where, as here, "Congress has taken the particular subject-matter in hand, coincidence is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." *Charleston & W. C. R. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604. Certainly that is true in this case, where, to the extent that the Michigan restrictions exceed those of the National Act, they are precisely those which Congress rejected in formulating Federal policy in this field, and their enforcement, therefore, would override the deliberate judgment of Congress.

C. STATE DETERMINATION OF UNITS FOR STRIKE VOTES IS INCONSISTENT WITH THE DETERMINATION OF UNITS BY THE NATIONAL BOARD

State by State administration of waiting period and strike vote provisions such as those contained in the Michigan law, which enjoin strikes absent authorization by a majority of the employees in a State-defined bargaining unit, is demonstrably inconsistent with the scheme of collective bargaining in Nation-wide industries provided by the Federal Act. The National Act (Section 9 (b)) authorizes the National Board to find appropriate bargaining units of employees which will "insure to employees the full benefit of their right to self-organization and to collective bargaining." The unit finding fixes the size of the group which may

strike in support of bargaining demands. If the group is too small, employees may be left without that equality of bargaining power with the employer which it was the intent of Congress to promote. If the group is improperly defined competition between employees in the group and employees outside the group may prevent stabilization of wages, hours and working conditions within the appropriate area and again jeopardize the balance of bargaining power. The Federal Act is premised on the assumption that all employees in a bargaining unit are free to act together as a single entity in collective bargaining and related activities, including strikes, to obtain improved wages, hours and working conditions.[23] As indicated above, the Congress which enacted the amended Act believed that the right of employees to strike for such lawful objectives was an indispensable concomitant of the system of free collective bargaining.

The National Board has often found it desirable, in order to insure employees the full benefit of their right to bargain collectively, to find appropriate a single unit consisting of virtually all employees of an employer who operates many plants. In such cases, the Board's unit finding reflects its conviction that the equalization

[23] See Hiram S. Hall, *Impact of the Bargaining Unit on Labor Management Relations*, New York University, Second Annual Conference on Labor (1949), pp. 29–48.

of bargaining power contemplated by the statute may best be accomplished if all of the employees are free to act together in collective bargaining, and are free to strike at the same time and in support of the same demands.

The Board made such a determination with respect to the parties involved in the instant case. By decision and certification of the National Board the Union represents in a single bargaining unit employees of the Chrysler Corporation employed in plants located in the States of Indiana and California as well as the State of Michigan. *Chrysler Corp.*, 42 NLRB 1145 (R. 17, 81, 108). The successive collective bargaining agreements between the Union and the Chrysler Corporation apply to all employees in this bargaining unit (*ibid.*). The scheme of the National Act thus contemplates that all of the employees in the bargaining unit, whether employed in Michigan or elsewhere, shall be free to act together and simultaneously in support of legitimate collective bargaining demands.

The waiting period limitations of the Michigan law apply, however, only to a portion of the bargaining unit which has been found appropriate by the National Board. To the extent that waiting period limitations are imposed upon employees in the Company's Michigan plants which are not imposed upon employees in the company's Indiana and California plants, the Michigan Act

fragmentizes the bargaining unit and, by preventing the employees in the bargaining unit from taking uniform action in support of lawful collective bargaining demands, impairs Federal policy.

In addition, if Michigan is free to impose notice and waiting period requirements which must be observed by employees in the bargaining unit who are employed in the State of Michigan, Indiana and California must likewise be free to impose different and varying notice and waiting period requirements upon employees in these States. The consequence would be to impose upon employees of a single employer engaged in nation-wide operations the necessity of complying with diverse and conflicting State requirements before they would be free to act as a unit in collective bargaining with their employers. That such a result is inconsistent with the provisions of the National Act empowering the National Board to group in one unit all the employees of one employer, although scattered in many States, requires no elaboration.

State by State administration of a majority strike vote provision is likewise incompatible with Federal policy. Even assuming, *arguendo,* as the court below apparently believed (see 38 N. W. 2d 421, 425–426), that as a concomitant of its provision for majority rule (Sections 9 (a) and 8 (a) (5)), the National Act sanctions only those strikes which are approved by a majority of the

employees in the appropriate bargaining unit,[24] effectuation of this policy would require determination of the desires of a majority of the employees *in the bargaining unit found to be appropriate by the National Board.* Where, as in this case, the Board has found appropriate a bargaining unit extending beyond the boundaries of a single State, it is beyond the power of any State to make such a determination. Thus, the elections provided for by the Michigan law are limited by the statute to employees in a bargaining unit defined by the State Board, and this unit can be no broader than the State itself.

Administration of the Michigan statute could not, where a Nation-wide unit is involved, comport even with the hypothetical policy of the National Act as to minority strikes. Normally,

[24] The assumption is unwarranted. See pp. 15–17, 27–30, *supra.* It has never been doubted that until an exclusive bargaining agent has been selected a minority of the employees in any unit which the Board might deem appropriate for collective bargaining are protected by Section 7 when they engage in strikes for organizational purposes or to secure redress of grievances. Moreover, the Board and the courts of appeals have held that even after an exclusive representative has been selected, strikes in support of legitimate demands are protected by the Act although only a minority in the unit participate. *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (C. A. 6), certiorari denied, 332 U. S. 762; *National Labor Relations Board* v. *Draper Corp.*, 145 F. 2d 199, 205 (C. A. 4). To the extent that the Michigan Act pronibits minority strikes under these circumstances it is in conflict with the Federal Act.

of course, the vote of employees in only one fragment of a bargaining unit cannot establish whether or not a majority of the employees in the unit as a whole favor a strike. Nevertheless, if a majority of the employees in one State should vote against a strike, all of the employees in the State would be bound thereby, despite the fact that, viewing the unit as a whole, a clear majority of the employees favor the strike.

Section 9e of the Michigan Act, which authorizes the State Board to define units in which strike votes shall be conducted, in terms provides that for this purpose the State Board "shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining." This provision is crucial to the State Board's administration of the majority strike vote provisions of the law. In view of the scheme of the Federal Act, and the serious potentials of conflict which would otherwise result, this Court has twice held that the function of determining bargaining units which will best secure to employees their right to collective bargaining, is, so far as industries subject to the National Act are concerned, exclusively the province of the National Board, and one which State agencies may not perform. *Bethlehem Steel Corp.* v. *New York State Labor Relations Board*, 330 U. S. 767; *La Crosse Tel. Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18. Attempted performance of that function by Michigan authorities

in such a case as this, where the bargaining unit which might be deemed appropriate by the State Board must necessarily differ from that found appropriate by the National Board, creates actual conflict and is *a fortiori,* precluded by these decisions.

D. THIS CASE IS NOT CONTROLLED BY *U. A. W.* v. *WISCONSIN EMPLOYMENT RELATIONS BOARD,* 336 U. S. 245

In the *U. A. W.* case, decided last term, this Court held, as we read the opinion, that the States were free to enjoin the intermittent or recurrent work stoppages there involved because in the Court's view Congress had not outlawed or authorized the Board "to prohibit or to supervise the activity * * * nor to entertain any proceeding concerning it" (336 U. S. 245, 263). In the *U. A. W.* case there was no evidence that Congress had considered the question whether the "coercive tactics" utilized in that case should or should not be enjoined by Federal law, and, in the Court's view, the National Board was powerless to condemn such practices "because it is the objectives only and not the tactics of a strike which bring it within the power of the Federal Board" (336 U. S. 245, 263).

As we have shown, however, *supra,* pp. 26–32, the Congress did consider whether the specific type of conduct which Michigan here seeks to punish should be outlawed by the Federal Act. Moreover, the calling of a strike without notice

and observance of a waiting period, where, as in this case, the dispute arises over modification of an existing agreement, conduct which the Michigan Act seeks to reach, is an offense under Federal law, and is remediable by the National Board. Unlike the conduct involved in the *U. A. W.* case, it cannot be said that the conduct here involved is removed from the field regulated by the National Act.

In the *U. A. W.* case, 336 U. S. 245, 264–265, this Court further held that "recurrent or intermittent unannounced stoppage of work to win unstated ends was * * * [not] legalized and approved" by the National Act. The Court pointed out that the affirmative protection accorded by Section 7 of the National Act to "concerted activities for the purpose of collective bargaining" does not extend to "every type of concerted activity" (336 U. S., at p. 257), or to "every kind of strike" (336 U. S., at p. 260). In determining whether the States were empowered to enjoin the particular union conduct involved in that case the Court looked to relevant Board and Court decisions construing Section 7 of the National Act (336 U. S., at pp. 255–257). It concluded that the State prohibition could stand because neither the "bare language" of Section 7, nor "the settled interpretation of the Act by the Board," nor applicable decisions of the Supreme Court and of various Courts of

Appeals "immunize the conduct forbidden by the judgment below" (336 U. S., at pp. 255, 257).

We do not believe the Court decided in that case that Sections 7 and 13 of the National Act contained no protection for any type of strike or work stoppage in aid of legitimate collective bargaining demands, and that the States are free to enjoin strikes or work stoppages which are thus protected. On the contrary, the language of the opinion, which denies to Section 7 the effect of protecting "every type of concerted activity," "every kind of strike," or "all concerted activities" (336 U. S., at p. 257, 260, italics supplied), implies recognition that some forms of strikes and work stoppages in aid of collective bargaining are affirmatively protected by Section 7 against State interference. Resort to Board and court decisions which distinguish between types of strikes and other concerted activities which are protected by Section 7 from those which are not would have been superfluous if the Court meant to hold that Section 7 did not have the effect of precluding State interference with the exercise by employees of the right to engage, at least, in traditional forms of concerted activity in aid of lawful collective bargaining demands.

As we have shown above, Congress has regarded Federal recognition of the right to engage in such conduct as basic to the system of free collective bargaining which it is National policy

to protect and foster (*supra*, pp. 22–41). Consequently, it cannot be said that the *U. A. W.* case authorizes State interference with the concerted activities here involved.

CONCLUSION

For the foregoing reason, it is respectfully submitted that the judgment below should be reversed.

Respectfully submitted.

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MARCH 1950.

APPENDIX

The relevant provisions of the National Labor Relations Act, 1935 (49 Stat. 449, 29 U. S. C. 151, *et seq.*), are as follows:

* * * * *

SEC. 2. * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

* * * * *

The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141, *et seq.*), are as follows:

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"SEC. 2. When used in this Act—

* * * * *

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise,

and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer herein defined.

* * * * *

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

"SEC. 3 * * *

* * * * *

"(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board

shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members), and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

* * * * *

"SEC. 7. Employees shall have the right to self-organization; to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor ~~organization as a condition of employment~~ authorized in section 8 (a) (3).

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States,

shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

"(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its ow rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) To refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

* * * * *

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not

compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications:

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later;

"The duties imposed upon employers, employees, and labor organizations by para-

graphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer

unit, craft unit, plant unit, or subdivision thereof: * * *

* * * * * * *

"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * * * *

"SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of

any law, either national or local, relating to collective bargaining.

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

* * * * *

SEC. 202. * * *

* * * * *

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

* * * * *

SEC. 203. * * *

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other

conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

* * * * *

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any

recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

* * * * *

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

* * * * *

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of in-

quiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the Board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

* * * * *

The relevant provisions of the Bonine-Tripp Act (Act No. 176 of the Public Acts of 1939, as amended by Act No. 318 of the Public Acts of

1947, Michigan Stat. Ann. 1947 Cumm. Supp. Sec. 17.454 (1), *et seq.*, Comp. Laws 1948, Sec. 423.1, *et seq.*) are as follows:

* * * * *

SEC. 9. No strike or lockout shall take place or be put into effect until and unless each of the steps have been taken and the requirements complied with as provided in this act.

1. In the event the parties thereto are unable to settle any dispute, the employees or their representative, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice upon the board of such dispute together with a statement of the issues involved. Said notice may be served personally on any member of the board and a copy thereof personally served upon the other party, or sent by registered mail to the board at a regularly established office thereof and to the employer at his regular address not less than 10 days before the strike or lockout is to become effective, or in case of an industry affected with a public interest or a public utility or hospital, said notice shall be so served not less than 30 days before the strike or lockout is to become effective.

2. Upon receipt of such notice it shall be the duty of the board to exercise the powers herein granted to effect a settlement of such dispute by mediation between the parties. Prior to the calling of an election as provided hereinafter, it shall be the duty of each of the parties to such dispute to actively and in good faith participate in the mediation thereof. At least 1 member of the board, to be designated by the chairman, shall actively participate

in the negotiations to mediate any dispute in an industry affected with a public interest including any public utility or hospital.

SEC. 9a. In the event that it becomes apparent to the board that there is no reasonable probability of settlement of such dispute by mediation and that further efforts to that end would be without avail, there shall be held in the case of any impending strike, an election upon such issue which election shall be conducted and supervised by the board. In the event either party to said dispute notifies the board in writing, a copy of which shall at the same time be served on the other party, that in the opinion of such party, further efforts to settle such dispute by mediation would be without avail, it shall be the duty of the board to cause an election to be held within 10 days of the receipt of such notice unless it is not practical to hold such election within said period, in which event said election shall be held within 20 days of receipt of such notice: *Provided,* That such board need not call more than 1 election involving the issues set forth in the notice served upon the board. The expense of such election shall be defrayed by the parties to such dispute either equally or upon such other basis as may be agreed upon. Every employee in the bargaining unit shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees in such bargaining unit must vote in favor of such action. Said election shall be by secret ballot, and shall be held on the premises where those voting are employed. The board shall have the power and authority to promul-

gate such rules and regulations as shall be necessary to effectively conduct any election and the wilful violation of any such rules and regulations shall be a violation of the provisions of this act.

SEC. 9b. It shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a.

* * * * *

SEC. 9e. The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: *Provided, however,* That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for collective bargaining, the board shall adopt such unit.

* * * * *

SEC. 22. Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, or who shall cause or call a lockout, without first having served notice as required in section 9 of this act, or while mediation is pending as provided in section 9c of this

act, or while an election is pending under said section 9, or while arbitration proceedings are pending under sections 9d and 13 of this act, or any person who shall engage in unauthorized picketing as prohibited by this act, or who shall knowingly and wilfully violate any of the rules or regulations promulgated under section 9a and section 9c, or any of the provisions of section 9f, shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

SEC. 22a. The board, or any person, labor organization, firm or corporation may pursue any proper legal or equitable remedy or relief in any court of competent jurisdiction for any act or conduct in violation of any of the provisions of this act.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1949.

No. 456.

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., EMIL MAZEY, In His Own Behalf and in Behalf of 1776 Employees of the Chrysler Corporation; NORMAN MATTHEWS, ARTHUR GRUDZEN, ALEX BARBOUR, WILSON KUCK, RALPH FILECCIA, ALFRED S. MARCANGELO, RICHARD T. LEONARD, LEONARD McPHERSON, FREDERICK JOHNSTON, WALTER ROOD, WILLIAM T. ARCHER, MICHAEL LACEY, HARRY SOUTHWELL and BLAINE MARRIN, Appellants,

vs.

GERALD K. O'BRIEN, Wayne County Prosecuting Attorney, and STEPHEN J. ROTH, Attorney General of the State of Michigan,

BRIEF

Of Michigan State Federation of Labor and Michigan Conference of Teamsters as Amici Curiae.

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BRIEF

Of Michigan State Federation of Labor and Michigan Conference of Teamsters as Amici Curiae.

STATEMENT.

This brief as Amici Curiae is filed pursuant to Rule 27 (9) of this court. Briefs filed by the parties hereto and other interested parties discuss a number of issues.

For the purpose of avoiding repetition and to call to the court's attention its prior rulings on what we consider to be analogous cases, this brief will be limited to the conflict of the Michigan Statutes with the "Equal Protection" and "Due Process" clauses of the Fourteenth Amendment to the United States Constitution. The basic question presented by this case is:

May the State of Michigan prohibit, under criminal penalty, the exercise of freedom of speech and assembly, and the right to strike and bargain collectively by employees, unless a majority in a collective bargaining unit vote in favor of the exercise of such rights?

Because the imposition of conditions precedent to the exercise of constitutional rights is a matter which affects every citizen, including every working man in the State of Michigan, the Michigan State Federation of Labor and the Michigan Conference of Teamsters are gravely concerned about the general proposition: whether the approval by a majority in an election prior to the exercise of these fundamental rights is a constitutional requirement.

ARGUMENT.

The Prohibition, Under Criminal Penalty, of the Exercise of Constitutionally Guaranteed Activities Unless Sanctioned by a Majority as Required by the Michigan Statutes, Deprives the Minority of Rights Protected to Them by the Federal Constitution.

The principle of permitting employees to go out on strike only after the majority have voted in favor of such action by secret ballot is inimical to the basic concepts of our American system of constitutional government. Such a requirement has an adverse effect on the employment relationship of all employees and their employers in the State of Michigan and will only promote strife between labor and management rather than harmony and good will. The application of such a majority rule, insofar as human rights are concerned, results in the substitution of principles of arithmetic for principles of morality.

The exercise of the right to strike, free speech, assembly, and collective bargaining are rights which inure to the individual and to the minority group, as well as to the majority. The right to engage in such activity has never been conditioned upon the will of the majority. This is true of these basic rights which pertain to the working man, as well as to all other rights protected by the Constitution.

We have attained our greatness as a democracy because we have always championed the right of the dissident minority to protest the action of the majority and to keep the majority aware of its obligations to the minority. Take away this means by which the minority makes itself heard and felt, and it will be deprived of the opportunity of ever persuading the rest of the employees to make it the majority.

Under the Equal Protection clause of the Fourteenth Amendment to the Constitution, as well as under the Due Process clause, the Legislature may make proper classifications, based upon a difference which bears a reasonable and just relation to the purpose to be accomplished by the Act, and great weight is ordinarily attached to the legislative classification if some valid reason can be found for it. But the legislative classification in this case is a general and arbitrary one and expressed in the general language of majority vote. It is submitted that such general classification, particularly where basic human liberties are involved, cannot be sustained. **Connolly v. Union Sewer Pipe Co.**, 184 U. S. 540. The classification is not based upon environment, circumstances, nature of occupation, type of business, public interest involved, public health involved, morals, or safety; nor is it based upon the location of the plan or establishment, that it, is has no apparent relationship to whether the scene of the dispute is in an industrial or residential section, or whether it is in a heavy or light traffic area, or whether it is in an adequately or inadequately policed area. There is no definite arithmetical standard other than the general standard of majority and minority. In one type of case, 5,000 persons may engage in the activity, while in another case as few as two persons may not. In a plant employing 10,000 working men, where there is the same controversy over the same matters, 5,001 employees may perform a certain act, whereas 4,499 may not.

Such legislation certainly is not germane, is not based upon reason, nor is it based upon fact. It does not seem any more germane to us than would the classification of employees into red-heads, brunettes and blonds, giving to red-heads the right to picket, to blonds the right to strike, and to brunettes no rights at all.

To say, as Michigan has attempted to say, that when a majority of employees are in dispute with their employer,

then strikes and picketing are consistent with the public policy of the state, and will not affect the public safety, health and morals, nor breach the peace, nor impede the free use of the highways, but that the same action on the part of the minority would so result is so specious on the face of it to make extended argument unnecessary.

Proponents of this type of legislation fall into the easy error of saying that the statute is merely an application of the majority rule, which is an essential part of our democracy, and they call attention to the majority rule provisions of the various Labor Relations Act, and the majority rule provisions with respect to elections. The proponents of that argument, however, overlook the very obvious fact that in election and representation cases, even though a majority may have made a selection, to which the minority is opposed, the minority nevertheless is free to continue to exercise their basic and constitutional rights without restraint or hindrance.

The essence of democracy lies not in the majority rule, which is an expedient for the conduct of the affairs of the democracy, but lies in the constitutional guarantees that any person, regardless of whether such person is a member of a majority group or not, is entitled to the free expression of his own opinions, and to his own freedom of action, being liable only for the abuse thereof.

The majority rule is not a particularly democratic rule, but is the only way that the affairs of the citizens can be conducted in an orderly manner. The majority rule may result in hardships to minority groups, but never may it nor does it deprive such minority groups of their basic rights.

So, while a majority may select a bargaining representative, or be opposed to a strike, the minority must never-

theless be free to engage in peaceful activities to register their disagreement with the action of the majority, and so attempt to bring their own cause to triumph.

It is entirely possible, and it has sometimes happened, that labor organizations representing the majority of employees have followed policies or principles, which, in the opinion of individuals or minority groups, have been improvident, unwise, or highly discriminatory as to these individuals or minority groups. Obviously it would be an impossibility for such minority group to persuade a majority to join with it in a strike and to engage in all the normal and natural concomitants of a strike. These minority groups, under the Michigan Law, are prohibited, under penal sanction, from the exercise of their freedom of speech, press and peaceful assemblage guaranteed by the Constitution of the United States. And the penal sanction arises by reason of the lack of action taken by the majority. Thus, determination of whether a crime has been or will be committed rests in the hands of the majority.

There is certainly an anomaly in any legislation which recognizes the exercise of the constitutional right or basic right where approved of by a majority of individuals of a particular class, but denies the exercise of these same rights to a minority group in the same class. Yet, as to other groups in classes outside of the general classification (that is outside of the labor classification), there are no restrictions as to the exercise of such rights, whether by majorities or minorities.

Surely when it comes to classification, an attempted majority-minority classification upon which the exercise of basic right is conditioned, is as much "constitutionally an irrelevance" as was indigence in the case of **Edwards v. California** (1941), 314 U. S. 160, 184.

We refer the court to a recent and learned article dealing with the scope of the equal protection of the laws appearing in 37 Cal. Law Review 341. The authors of that article, based upon their comprehensive survey of the treatment of the Equal Protection Clause, conclude with the following observation:

> "Virtually strangled in infancy by post-civil-war judicial reactionism, long frustrated by judicial neglect, the theory of equal protection may yet take its rightful place in the unfinished Constitutional struggle for democracy."

Zoning Cases Decided by the Court Are Directly Analogous.

There have been other attempts to require the imprimatur of the majority before certain rights could be exercised. These attempts were made in fields other than labor relations, but they failed. One class of cases which we believe bears a direct analogy to the instant situation are those cases dealing with the zoning ordinances.

The right of municipal governments to properly zone the municipality had been recognized by this Court in the case of **Euclid v. Ambler Realty Company**, 272 U. S. 365, 71 L. Ed. 303. Municipalities thereafter cast about for ways and means of zoning such municipalities in such way that would meet with the approval of most of the taxpayers. An early device was that of permitting a stated percentage of adjoining property owners to determine whether or not certain uses should be made of the property within a limited area. The first ordinance of this type which came to the Court for its consideration was that of the City of Richmond in the case of **Eubank v. Richmond**, 226 U. S. 137, 57 L. Ed. 156. In that case the ordinance provided that whenever the owners of two-thirds of property abutting on any street should, in writ-

ing, request the committee on streets to establish a building line, the said committee shall establish said line which shall not be less than five feet nor more than thirty feet from the street line. The Supreme Court of the State of Virginia held the ordinance valid, but this Court reversed that judgment and found the ordinance to be unconstitutional and void. It was there pointed out:

"In other words, part of the property owners fronting on the block determine the extent of use that other owners shall make of their lots and against the restriction they are impotent. This we emphasize. One set of owners determines not only the extent of use but the kind of use which another set of owners may make of their property. In what way is the public safety, convenience or welfare served by conferring such power? The statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the property rights of others, creates no standard by which the power thus given is to be exercised; in other words, the property holders who desire and have the authority to establish the line may do so solely for their own interest, or even capriciousness. * * * It is hard to understand how public comfort or convenience, much less public health, can be promoted by a line which may be so variously disposed.

"We are testing the ordinance by its extreme possibilities to show how, in its tendencies and instances, it enables the convenience or purpose of one set of property owners to control the property rights of others, and property determined as the case may be for business or residence—even it may be the kind of business or character of residence. One person having a two-thirds ownership of a block may have that power against a number having a less collective ownership. If it be said that in the instant case there is

no such condition presented, we answer that there is control of the property of the plaintiff in error by other owners of property, exercised under the ordinance. This, as we have said, is the vice of the ordinance and makes it, we think, an unreasonable exercise of the police power."

This case was subsequently followed in the case of **Washington ex rel. Seattle Title & Trust Company v. Roberge**, 278 U. S. 116, 73 L. Ed. 210, in which case the Court had before it an ordinance which provided that a philanthropic home could be erected in what was otherwise known as a residence district upon written consent of two-thirds of the property owners within 400 feet of the proposed building. Such permission was not forthcoming for the erection of the home for the aged. An application was made to the Court to order the issuance of a building permit for the erection of such home. The Supreme Court of the State of Washington upheld the validity of the ordinance, whereupon appeal was taken to this Court. Here it was said:

"The right of trustee to devote its land to any legitimate use is properly within the protection of the constitution. The facts disclosed by the record make it clear that the exclusion of the new home from the first district is not indispensable to the general zoning plan. And there is no legislative determination that the purported building and use would be inconsistent with public health, safety, morals, or general welfare. The enactment itself plainly implies the contrary. The grant of permission for such building and use, although purporting to be subject to such consents, shows that the legislative body found that the construction and maintenance of the new home was in harmony with the public interest and with the general scope and plan of the zoning ordinance. The

section purports to give owners of less than one-half of the land within the 400 feet of the proposed building authority—uncontrolled by any standard or rule prescribed by legislative action—to prevent the trustee from using its land for the proposed home. The superintendent is bound by the decision of inaction of such owners. There is no provision for review under the ordinance; and failure to give consent is final. They are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily and may subject the trustee to their will or caprice. **Yick Wo v. Hopkins**, 118 U. S. 356, 366, 368, 30 L. Ed. 220, 225, 226, 6 S. Ct. Rep. 1064. The delegation of the power so attempted is repugnant to the due process clause of the Fourteenth Amendment. **Evan v. Richards**, 226 U. S. 137, 143, 57 L. Ed. 156, 158, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76, Ann. Cas. 1914B 192; **Browning v. Hooper**, 269 U. S. 396, 70 L. Ed. 330, 46 Sup. Ct. Rep. 141."

It is not difficult to paraphrase the above quotation so as to make it applicable to the instant case. In this case, as in that, employees have a right to exercise their constitutional rights of withholding their labor in concert, freedom of speech, press and peaceable assemblage, in advertising facts of a labor dispute or controversy to the sympathizers and the public generally. As in the zoning case, there is no legislative determination that the exercise of such rights is inconsistent with the public health, safety and morals or the general welfare, since the law itself recognizes that the majority group may exercise such rights. As in the zoning case, the authorities have no discretion in the matter once it is found that the strikers and picketers have not been able to get a majority of employees to vote by secret ballot to call the strike. That is a prohibition of law.

And, as in the zoning cases, we have in the instant case a statute providing that unless one is successful in persuading a majority group to agree with one's point of view, and if such majority group, for whatever reason peculiar to it, refuses or fails to agree, then such person is precluded by the majority action from exercising constitutional rights. **It is the will, wish, whim or caprice of this majority which controls whether or not American citizens may indulge in activities guaranteed by the American Constitution.** No inquiry is made as to whether or not conduct is peaceful, harmless and merely legitimately persuasive. Once the fact is found that there was not a secret ballot, by which a majority has expressed its desire to strike, those who do desire to quit their employment in protest are precluded from engaging in the ordinary strike activity or any of its concomitants.

On the basis of these cases, it seems clear to us that the legislative recognition of certain rights—to concertedly withdraw from employment, to picket, boycott, and engage in those activities which are concomitants of the strike—in some cases and not in others, depending upon whether or not in any particular case a majority of a particular group may approve of the action or not, is a violation of every fundamental tenet of constitutional law.

CONCLUSION.

The issues presented in this case are ones which are vital to organized labor as a whole. The act under attack is another step which marks out the general pattern of restrictive legislation on the activities of working people and their labor unions. The tendency in recent years has been to tighten the area of permissible industrial conflict to an ever decreasing number of participants.

When the state attempts to limit the assertion of the rights in question to the majority only, and in effect fixes

conformance with the majority as the purchase price for these cardinal rights, then the state renders the Fourteenth Amendment in fact a nullity.

This is another of those beginnings of constitutional encroachment for which this court has always been alert. It should be inhibited now. As Justice Sutherland said, dissenting in **Associated Press v. N. L. R. B.**, 301 U. S. 103, 141, "For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

It is submitted that the judgment below should be reversed.

Respectfully submitted,

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October Term, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., et al.,

Appellants,

v.

GERALD K. O'BRIEN, Wayne County Prosecuting Attorney and STEPHEN J. ROTH, Attorney General of the State of Michigan,

Appellees.

Brief Amicus Curiae for the States of Kansas and Wisconsin

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Appellees.

Brief Amicus Curiae for the States of Kansas and Wisconsin

NATURE OF INTEREST OF AMICI

While the States of Kansas and Wisconsin do not have statutes identical with the Michigan law which is involved in this appeal, they do regulate some aspects of industrial conflict, including certain incidents of strikes and of lockouts,[1] including one involving a strike vote.[2]

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[1] See Kan. G. S. 1935 secs. 44-601 et seq. and secs. 111.01 to 111.19 of the Wis. Statutes, 1949.

[2] See sec. 111.06 (2) (c), as interpreted in Hotel & R. E. I. Alliance v. Wis. E. R. Board, (1941) 236 Wis. 329, 346-347, aff. 315 U. S. 437, 86 L. ed. 946, 62 S. Ct. 706.

The interest of these *amici* is in judicial recognition of an area for state regulation sufficient to enable a state to prevent infringement upon its internal public welfare in situations in which it must cope with the results of unregulated action.

The states have responsibility for policing undesirable concomitants of industrial strife, and for alleviation of the unemployment and suffering which are often incidents of strikes and lockouts. The incidence of a strike or lockout in an industry within a state carries a local impact which imposes responsibilities on state government distinct from the more general problems.

With respect to the general problems involving the national health and safety, states cannot adequately cope. With respect to the more limited problems which have their primary impact within the borders of the state, the state government carries the primary responsibility.

So far as we have been able to ascertain, no states have endeavored to outlaw strikes and similar weapons of industrial conflict except, perhaps, in limited circumstances involving vital industries or government service.[1] A number of states have, however, enacted legislation respecting certain aspects of industrial conflict so as to prevent its being carried out in a manner to infringe unduly upon the welfare of the public. Different states have chosen the methods they deemed best suited to local situations and needs. Such local regulations have often provided real benefit to the nation as a whole by providing pragmatic tests for evaluating legislation later proposed on a federal level.

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[1] See, for example, secs. 111.50 to 111.65, Wis. Statutes, 1949.

States not only may, but must, cope with violence to person and property and infringement upon personal and public rights. Problems of this nature may occur in connection with strikes and lockouts, and are more frequently encountered in strikes upon which the opinion of the employees involved is in conflict than in those having the support of most of the persons primarily affected. If a clash of opinion between employees and employer is accompanied by a difference of opinion among the employees themselves, clashes over strikebreaking and other manifestations of friction are far more difficult to govern by ordinary policing than in strikes carried out according to the will of the majority of those participating. Some states, such as Michigan and Wisconsin, have deemed it in the interest of the public to require that the wishes of the employees be ascertained formally, and that unless a majority favors the strike, a strike is subjected to sanctions which may vary according to state policy.[1] The reasons above referred to provide a proper basis for such legislative policy in the exercise of state police power.

Legislation regulating strike activities, if otherwise valid under the primary guaranties of the constitution, must be recognized as properly within the area reserved to states if they are to cope adequately with their internal problems.

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[1] In Wisconsin, the Supreme Court has stated that the sanction is in the nature of loss of certain statutory privileges. See Hotel & R. E. I. Alliance v. Wis. E. R. Board, (1941) 236 Wis. 329, 347.

ARGUMENT

I.

STATE LAWS WHICH CURB STRIKES DO NOT CONFLICT WITH FEDERAL LEGISLATION

A. Congress has not Preempted the Field of Strike Regulation so as to Preclude Supplementary Regulation by states

As pointed out in *Bethlehem Steel Co. v. New York State Labor Rel. Bd.*, (1947) 330 U. S. 767, 67 S. Ct. 1026, 91 L. ed. 1234 where Congress "leaves the employee employer relationship free from regulation in some aspects, it implies that in such matters federal policy is indifferent." The principle was applied in *International Union v. Wisconsin E. R. Board*, (1949) 336 U. S. 245, 69 S. Ct. 516, to regulation of strike activities, with respect to which the court said:

> "It seems clear that this case falls within the rule announced in *Allen-Bradley* that the state may police these strike activities as it could police the strike activities there, because 'Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal Board.'"

Where the state legislation applies to activities which the federal law does not forbid, nor authorize the National Board to forbid, the issue is stated in the foregoing case to be "whether Congress has protected the union conduct which the state has forbidden, and hence the state legislation must yield."

Congress has not legislated so as to subject to federal action strikes which are called without approval of the majority of the employees affected.

The only basis, then, upon which it could be urged that Congress had precluded states from regulating in such field (except on grounds of inconsistency which will be discussed in the succeeding subsection) is that Congress intended such regulation of strikes as it undertook to be the only regulation. If that were the Congressional intent, it would invalidate not only such legislation as is involved in this case but all other state legislation dealing with aspects of strike activities such as those involved in *Allen-Bradley Local 1111 v. Wisconsin E. R. Board*, (1942) 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154 and *International Union v. Wisconsin E. R. Board*, (1949) 336 U. S. 245, 69 S. Ct. 516.

Congress, however, regulated strike activities only to the limited extent which it believed appropriate on a national scale. By refraining from further regulation, it did not intend to give affirmative sanction to all other strike activities so as to preclude all state regulation.

Its failure to prohibit certain activities was due, in many cases, to a belief that such matters were more appropriately covered by local regulation. See, for instance, the following excerpts of arguments made before Congress when the Labor Management Relations Act, 1947, was adopted. In opposing further restriction on employee activities, Congressman Lane stated:

> "Most of the real abuses which the bill proposes to penalize are already violations of state law to which violators are subject." (Vol. I, Legislative History of Labor Management Relations Act, 1947, 655)

Congressman Holifield said, in opposing inclusion in the bill of regulation of certain union strike activities:

> "In any event, the use of force or violence which does not have for its primary purpose the restraint of trade, is already unlawful and an offense under state laws. There is no necessity therefore to make such acts violations of the anti-trust acts, and in the process convert the already over-burdened United States District Courts into police courts, or to convert such purely local offenses into federal offenses. * * *" (Vol. I, Legislative History of Labor Management Relations Act, 1947, 842.)

While the above arguments did not relate directly to provisions involving strike votes, they are examples of the fact that much of the field of labor relations left outside of the scope of federal regulation was left untouched not because Congress wished to protect it, but because it was deemed more appropriately and effectively regulated on a local scale.

Congress would not have included in the Labor Management Relations Act, as it did, a requirement that parties terminating or modifying collective bargaining contracts should notify "any state or territorial agency established to mediate and conciliate disputes within the state or territory where the dispute occurred"[1] if it had not recognized the right of states to take steps toward preventing strikes and lockouts.

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[1]Sec. 8 (d), Labor Management Relations Act, 1947, 29 U. S. C. A. App. sec. 8 (d).

B. Congress Did Not Guarantee the right to Strike against the Wishes of the Majority of Employes affected

The primary purpose of Congress in enacting the National Labor Relations Act and its successor, Labor Management Relations Act, 1947, was not to encourage strikes; but to render unnecessary, wherever possible, the use of such coercive weapons as strikes or lockouts by protecting and encouraging collective bargaining. The Short Title and Declaration of Policy of the latter act reads:

> "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.
>
> "It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."[2]

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[2] 29 U. S. C. A. App. sec. 141.

In the Findings and Policies, it is stated that:

> "Experience has further demonstrated that certain practices by some labor organizations * * * have the intent or the necessary effect of burdening or obstructing commerce *by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest* or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed." (Emphasis supplied)

It was because of the objective to prevent stoppages of production resulting from strikes and lockouts, that the saving provision of sec. 13 was necessary. That section reads:

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, *or to affect the limitations or qualifications on that right.*" (Emphasis supplied)

The provision that nothing in the act shall effect "limitations or qualifications" on the right to strike is significant. In the light of such decisions as *Allen-Bradley Local 1111 v. Wisconsin E. R. Board,* (1942) 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154 and *International Union v. Wisconsin E. R. Board,* (1949) 336 U. S. 245, 69 S. Ct. 516, it is apparent that Congress recognized limitations imposed by state law as well as by federal law.

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[7] 29 U. S. C. A. App. sec. 151.

[8] 29 U. S. C. A. App. sec. 164.

Certainly there is nothing in the federal legislation to indicate a guaranty to a minority of employees to call a general strike without the approval of the majority. The whole process of collective bargaining under federal legislation is based upon the principle of majority rule. A law providing a method by which the majority of employees are permitted to effectuate their will on the question of striking is consistent with the same principle.

A state law leaving to the employees the question of whether they should strike does not conflict with federal regulations relating to bargaining units. Obviously a state law can have no extra-territorial effect. It can apply only to such employees within a unit as are within the territorial limits of the state. In order to take a strike vote in a case where a bargaining unit includes employes in other states, there is no need to set up a separate unit. The vote is necessarily limited to such part of the employees in the unit as are subject to the state law. Their election not to strike would have no effect upon the collective bargaining to be carried on for the unit. Protection of collective bargaining was intended by Congress to result in settlement of disputes without strikes and lockouts in a greater number of cases.

The fact that employees may be subject to state regulation in some respects, even though they constitute a part of the bargaining unit set up under federal legislation, is recognized in *Wisconsin E. R. Board v. Algoma P. & W. Co.*, (1949) 336 U. S. 301, 69 S. Ct. 584. The legislation upheld in that case required a vote by the employees before a contract requiring membership in a union as a condition of employment could be applied within the state.

II.

A LAW CONDITIONING STRIKES UPON A MAJORITY VOTE OF THE EMPLOYEES AFFECTED DOES NOT VIOLATE ANY PROVISION OF THE CONSTITUTION

The state law here under attack does not forbid strikes. It merely gives the right to determine whether there shall be a strike, to the persons upon whom the primary burden and hardship will fall.

It was pointed out by this court in *Palko v. Connecticut*, (1937) 302 U. S. 319, 326, 58 S. Ct. 149, 82 L. ed. 288 that the rights guaranteed by the Fourteenth Amendment against infringement through state legislation, are only those rights of the common law of so fundamenal a nature that "neither liberty nor justice would exist if they are sacrificed." The court said:

> "We reach a different plane of social and moral values when we pass to the privileges and immunities that have been taken over from the earlier articles of the federal bill of rights and brought within the Fourteenth Amendment by a process of absorption. These in their origin were effective against the federal government alone. If the Fourteenth Amendment has absorbed them, the process of absorption has had its source in the belief that neither liberty nor justice would exist if they were sacrificed. *Twining v. New Jersey*, supra, p. 99. * * *"

In the words of the court in that case, p. 328, the test with respect to the constitutionality of any specific legislation is:

"Does it violate those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.'"

As pointed out by this court in *Allgeyer v. Louisiana*, (1897) 165 U. S. 578, 589-590, 17 S. Ct. 427, 41 L. ed. 832:

"* * * The liberty mentioned in that amendment [the 14th] means not only the right of the citizen to be free from the mere physical restraint of his person, * * * but the term is deemed to embrace all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; * * *."

Under the foregoing rules, it is within the scope of a state's police power to regulate the extent of permissible interference with the pursuit of lawful employment.

The strike is an intentional infliction of harm; and as such has always been recognized as within the field of tort so as to require justification, even in the absence of legislation. See Restatement, Torts, Chapter 38.

A good discussion appears in Teller, *Labor Disputes and Collective Bargaining*, Vol. 1, sec. 14, pages 34-39, which reads in part:

"There is a school of thought which contends for an unlimited right to strike at common law, and a corresponding unlimited right to engage in a primary, peaceful boycott. How can combination, it is asked, change the character of an act? It is denied that mere combination can constitute criminal or tortious, acts which each member of the combination is free to do. * * *

"* * *

> "The mold of American law has generally developed an apparent disregard, however, of arguments seeking to justify private collective action. American courts have generally looked askance upon the organized attempt by labor to assert an absolute right to strike. The general rule has been tersely stated in State v. Stockford to the effect that 'A strike may be lawful or it may be unlawful and criminal. * * * The great preponderance of judicial authority holds that individually blameless acts may become illegal if done in combination. The reasons advanced to explain this disregard by the common law of that which to some courts and writers appear to be unassailable logic are varied and interesting, but in the main beside the point. * * *"

It was recognized in *Dorchy v. Kansas*, (1926) 272 U. S. 306, 47 S. Ct. 86, 71 L. ed. 248 not only is a strike "clearly coercion."

Activities of such a nature are susceptible to regulation under the police power. The policies adopted by the courts of many jurisdictions to refrain from interference in industrial conflict under the common law has been accompanied by a recognition that it is an appropriate field for legislative regulation. The legislature, "while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat."[*]

In the *Dorchy case, supra*, this court upheld a Kansas statute prohibiting, under criminal sanction, the calling of a strike. The court said:

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[*]Dissenting opinion of Justice Brandeis in **Duplex Printing Press Co. v. Deering**, (1921) 254 U. S. 443, 65 L. ed. 349, 41 S. Ct. 172.

"* * * Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike. * * *"

In *France Packing Co. v. Dailey*, (C. C. A. 1948) 166 F. 2d 751 the Circuit Court of Appeals for the Third Circuit upheld the provision of the War Labor Disputes Act prohibiting a strike for thirty days after notice, and pointed out the reason why the provisions of the constitution relating to involuntary servitude have no bearing upon legislation regulating strikes. The court said: (loc. cit. 166 F. 2d 753, 754):

"Support for its decision was found by the court below in the Constitutional protection against involuntary servitude; * * *.

"The contention that a limitation of the right to strike under the specified narrow conditions of Section 8 partakes of involuntary servitude is not substantiated by the cases. To the contrary, *there is a wide distinction between a worker quitting his job, for any reason or no reason, on the one hand, and a cessation of production by workers who seek to win a point from management, on the other hand.* * * *

"* * *

"In brief, the restricted limitation of the right to strike, in this Act, refers to circumstances involving a continuing master and servant relationship. *There is no involvement here with the distinct—and unquestioned-right of the worker to quit his job* or the right of the employer to discharge him for cause. In this situation we fail to see any true constitutional question in this case." (Emphasis supplied)

The court has again, very recently, tacitly recognized that there is no constitutional objection to an injunction restraining a union and its officials from encouraging workers to interfere with production by strike or cessation of work. See *United States v. United Mine Workers of America,* (1947) 330 U. S. 258, 91 L. ed. 884, 67 S. Ct. 677.

Many of the cases cited by the appellants have arisen in connection with the historical doubt of the right to strike at all, and pronouncements of the so-called "right to strike" have been in recognition of the particular jurisdiction's philosophy on the question of public policy in the *absence* of legislation. The appellants confuse assertions of the so-called "right" to strike in such cases (which is nothing more than a recognition that such action is not unlawful in the absence of legislative proscription) with the inalienable rights guaranteed by the constitution. The mere recognition that a certain course of conduct is not unlawful in the absence of prohibition should not be translated into the proposition that the constitution protects such activity from any regulation. There is a vast difference between a right by sufferance and an inalienable right protected by the constitution.

The case of *State ex rel. Hopkins v. Howat,* (1921) 109 Kan. 376, 25 A. L. R. 1210, 198 Pac. 686 is another in which a law restricting strikes was upheld. Writ of error was dismissed by the United States Supreme Court in *Howat v. Kansas,* (1922) 258 U. S. 181, 66 L. ed. 550, 42 S. Ct. 277.

See, also, the decision of the United States Supreme Court in *Southern S. S. Co. v. National Labor Relations Board,* (1942) 316 U. S. 31, 62 S. Ct. 886, 86 L. ed. 246, in which it recognized the right of Congress to make unlawful a seamen's strike even when the boat was docked.

CONCLUSION

A statute which places sanctions upon the calling of a strike without the approval of a majority of the persons primarily affected is within the proper scope of legislative authority, in which "some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces"[10] may be imposed by a state in the interest of the community.

Respectfully submitted,

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[10]**Carpenters & Joiners Union, etc. v. Ritter's Cafe,** (1943) 315 U. S. 722, 62 S. Ct. 807, 86 L. ed. 1143.

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vs.

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Appellees.

BRIEF

on behalf of EMPLOYERS ASSOCIATION OF MILWAUKEE, Amicus Curiae

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Appellees.

BRIEF
on behalf of EMPLOYERS ASSOCIATION OF MILWAUKEE, Amicus Curiae

It is the position of the Employers Association of Milwaukee, amicus curiae, that on this appeal the judgment of the Supreme Court of Michigan, 325 Mich. 250, should be sustained.

Appellants attack the statute of Michigan in question known as the Bonine-Tripp Act (Michigan Statute Annotated, 1947, Cum. Supp. § 17.454(1) et seq.), the substance of which statute is summarized at pp. 2-4 of appellants' brief. This statute, in effect, provides a penalty for the calling of a strike unless and until a majority of employees in the unit have so voted in an election conducted by the Michigan State Mediation Board.

STATEMENT

The statute in this case is an exercise of the police power of the State of Michigan for the purpose of regulating the method of the calling of a strike. The statute has, of course, no extra territorial effect.

The general purposes of it are evidently (1) to provide for state mediation; (2) to provide for an election with reference to the calling of a strike; and (3) (because of 1 and 2) to enhance the probability of industrial peace and to give all employees within the unit affected by the threatened strike an opportunity under state supervision to vote by secret ballot upon the question of the strike.

Section 22 of the statute provides for violations of it as criminal offenses. It will be noted that there is nothing in the Act which prohibits a strike or requires an individual employee to render labor or service without his consent.

Certainly there is nothing in the Michigan Act which in any manner infringes upon the provisions of Section 502 of the Labor-Management Relations Act of 1947.

QUESTIONS PRESENTED

Appellants present three questions in their brief (p. 4):

1. Whether the Michigan statute providing for a majority vote before authorizing a strike invades the field occupied by the Labor-Management Relations Act of 1947;

2. Whether these provisions conflict with the provisions of the Labor-Management Relations Act of 1947; and

3. Whether these and other provisions of the Michigan statute constitute unlawful restraints in violation of the due process clause of the Fourteenth Amendment.

ARGUMENT

1. The Statute is a Proper Police Power Law.

The State of Michigan and many other states prior to a period roughly from 1935 to 1947 have been confronted with many strikes in many important and large industries and others involving thousands of employees with resultant economic loss to the people of the states. Attendant upon these strikes, the widespread fashion was lawlessness which at times, as is a matter of common knowledge, affected deeply and intensively the welfare of the states and their people at large.

There can be no question but that in the exercise of its police power, the State of Michigan constitutionally could legislate in this regard to protect the public interest involved.

The Labor-Management Relations Act of 1947, and its predecessor, the Wagner Act, employed the majority principle in the matter of collective bargaining, and the Michigan statute employs the same majority principle in the matter of the strike vote.

This principle and its application to statutes governing strike action is fully covered in the opinion of the Supreme Court of Wisconsin in *Hotel & Restaurant Employees, Local 122*, 236 Wis. 329, at p. 345, sequitur, quotations from which opinion are found in the opinion of the supreme Court of Michigan in this case, and, as stated in the opinion of the Supreme Court of Michigan, this court in 315 U.S. 437 quoted the provision of the Wis-

consin statutes which makes it "an unfair labor practice" to "cooperate in engaging in promoting, or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike * * *."

It may be added that this involves an exercise of the right of the state for the purpose, at least, of laying some emphasis on the interest of the state in the *right of its people to work*. Much has been said and written over a long period of years, and particularly in the last 15 to 20 years, of the fundamental right to strike for lawful purposes.

No one has any quarrel with this, but it is sometimes difficult to understand why the correlative *right to work* has not had at least some degree of similar emphasis. This statute, at least gives the employees a *correlative right to determine whether they want to work or strike*. Surely this is a proper and laudable legislative purpose.

It will be noted that the Wisconsin law makes it an unfair labor practice to engage in the concomitants of a strike without a vote in favor of the strike by a majority in a secret ballot, and that the Wisconsin law does not provide for the supervision of the holding of the election by the Wisconsin Employment Relations Board, the agency in Wisconsin created to enforce the Wisconsin Employment Peace Act. (Wis. Stats. Sec. 111.01 to sec. 111.65, particularly Sec. 111.06 (2) (e).)

2. The Michigan Statute Does Not Invade a Field Which Congress Has Occupied.

Much of the appellants' brief, particularly pp. 20-24, deals with the history of the Labor-Management Rela-

tions Act of 1947. On this point, emphasis is laid by the appellants on the progress of the Labor-Management Relations Act of 1947 as it went through congress, deriving from the facts thereof, as is set forth at pp. 20-24 of appellants' brief, that congress expressly rejected the strike vote provision which Michigan has enacted.

It is submitted that the mere fact that congress rejected a provision for a strike vote does not delimit the power of the states to provide for such a vote.

There is nothing in the legislative history of the Act which, in our judgment, indicates that this was the intention of congress. It, on the other hand, certainly appears that congress left the matter open to the states in which a labor dispute or strike occurs.

One can search the legislative history of the Labor-Management Relations Act of 1947 and one will find therein no intimation that there was any thought of a prohibition upon the states to enact strike vote legislation.

In fact, due to industrial conditions, situations vary so much in the different states that it is our opinion that it is probable that congress had in mind that if there was to be any regulation of this sort it should fit the particular situation of a particular state. After all, the states have to deal in the exercise of their regulatory police power with the concomitants of a strike and the question as to whether or not the majority of the employees affected desire to strike.

One thing is certain—there is nothing in the language of the Act to indicate that congress has preempted this field.

Nothing can be found in the text of the Act which bars the states from a legitimate regulation to protect its people generally, and those to be involved in a strike, if the employees themselves did not care to follow the mandates of either labor leaders or the minority of the employees. It is expressly significant that the Labor-Management Relations Act of 1947 contains Section 13 to the effect that nothing in the Labor-Management Relations Act of 1947 shall affect the limitations or qualifications of that right (the right to strike).

3. The Michigan Statute Does Not Conflict With the National Act.

We are heartily in accord with the statement in appellants' brief, at p. 27, that the purpose of the Labor-Management Relations Act of 1947, like that of its predecessor, the Wagner Act, is the encouragement of collective bargaining.

It is difficult for us to follow appellants' argument that the State of Michigan interferes with collective bargaining. It would seem that the argument is devoted to the fact that the Michigan statute sets up a different unit for the vote than may be set out in a collective bargaining contract. Michigan is interested, and rightly so, in what occurs within its borders, and in the case of a union and an employer, such as in this case, that have a master contract governing employment relations in several states, the Michigan law cannot operate beyond state lines. As far as the state is concerned, it includes all of the unit which is provided for in the collective bargaining contract which is within the State of Michigan, and the result of the strike vote affects only those within the unit who are in the State of Michigan. This is a strike vote unit, not a collective bargaining unit.

It cannot be said, we think, that because a collective bargaining unit in a collective bargaining contract is wider than the confines of the state with respect to the people in such a bargaining unit, that the state thereby interferes with or adopts a different unit on the sole question of whether or not the State of Michigan may set up machinery to determine whether the people within that state who are to be affected thereby desire to go upon a strike.

4. The Michigan Statute Does Not Conflict With the Right to Strike Guaranteed by the National Act.

Appellants claim that the delays imposed by the Michigan statute conflict with the National Act, referring to Section 8 (d) providing for the 60-day notice of termination and 30-day notice to the Federal Mediation and Conciliation Service, and also to any State or territorial agency established to mediate and conciliate disputes where the dispute occurred.

We fail to find, however, in the National Act any specific legalization of a strike as such after the 60 days have expired, and in any event there was nothing to prevent the strike vote under the Michigan statute from being held within the 60 days. Furthermore, that portion of Section 8 (d) of the National Act requiring a 30-day notice to the mediation agency of the state is entirely consistent with the avowed purpose of congress to leave a field for activity to the state.

There is nothing in the Michigan statute which prohibits a strike or interferes with the right to strike. It merely provides in substance that any person who either individually or as one of a group of persons instigates a

strike or who shall call or cause a strike to be placed into effect, etc., without having first complied with the provisions of the Act, shall be guilty of a criminal offense. (Sec. 22, Mich. Stats.)

There is no deprivation of the right to strike as contended by appellants in their brief (p. 36). This question is not involved. The only thing involved here is the right of the state to regulate in the exercise of its protective police power and provide for an authorized strike.

5. The Michigan Statute Does Not Violate the Due Process Clause of the Fourteenth Amendment.

The third general point made in the appellants' brief is that the Michigan Statute violates the due process clause of the Fourteenth Amendment.

It seems to us that this contention is ably and completely dealt with in the opinion of the Supreme Court of Michigan, in which it quotes excerpts from *Hotel & Restaurant International Alliance Local 122 v. W. E. R. B.*, 315 U.S. 437. (See opinion, Supreme Court of Michigan, T. p. 127)

There is always a balance to be maintained between the exercise of the constitutional right of freedom of speech and the intrusion into that as affecting the correlative constitutional rights of others and of the legitimate exercise by the state of a police power intertwined in essence with a legitimate conception by the state of what should be done for the protection of the liberty of its people as a whole. *Carpenters Union v. Ritters Cafe*, 315 U.S. 722. *Giboney v. Empire Storage and Ice Co.*, 336 U.S. 490.

It is the same with the so-called constitutional right to strike, as this court pointed out in *International Union*,

UAW, AFL Local 232 v. W. E. R. B., 336 U.S. 245, in which the court commented upon the right to regulate strikes, and particularly said:

> "The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act. Labor Board v. Jones & Laughlin, 301 U.S. 1 33."

This court goes on to say, in the opinion, in effect, that this recognition of the right to strike plainly contemplates a lawful strike, but that it did not legalize strikes, such as the sit-down strike, which state law made illegal, or a strike that ran afoul of federal law, or one in violation of a contract made pursuant thereto, or one creating a national emergency. In all of these cited instances, the fundamental right to strike, which involves the right of freedom of speech to the extent of publicizing the facts of the strike and to use peaceful persuasion to obtain its objectives, must yield to a superior right of the state or the nation in its legitimate characterization of unlawful strikes.

SUMMARY

We have here a statute designed to protect and further, as the legislature has recognized, the best interests of the people of the State of Michigan.

Judicial, as well as legislative, notice must be taken of the conditions, as we indicated at the outset of this brief, that existed in the State of Michigan and other

states, which prompted the adoption of what we may call this public welfare law. Strikes and industrial strife affecting thousands and thousands of people were, and are, rife. Everybody knew, and knows this, and everybody understands its effect upon the welfare of the people of the state.

The legislature felt that this welfare could best be protected and the interests of the employees involved in industrial disputes could best be furthered by providing for a strike vote before a strike should occur.

This law in no manner denies the union or the employees any constitutional rights, and congress, by its legislation, has not preempted the field of regulation of strikes. In fact, there is complete abnegation by congress of this purpose. Therefore, the statute, being a reasonable exercise of police power, must stand, and the judgment of the Supreme Court of Michigan should be affirmed.

We may add that a considerable number of states, such as Colorado, Delaware, Florida, Kansas, Minnesota, North Dakota, and Utah have laws providing for strike votes. They vary in some particulars, but their purposes are, we think, alike.

The State of Wisconsin has, as is hereinbefore set forth, provided for a secret ballot of those employees in the unit. It has, as has been pointed out, made the concomitants of a strike, such as picketing and boycotting, an unfair labor practice unless a majority has voted favorable to the strike, and the strike vote election is not conducted or supervised by the Wisconsin Employment Relations Board.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of Michigan should be affirmed.

Respectfully submitted,

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APPENDIX

Sec. 13 of Labor Management Relations Act:

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

Sec. 111.06(2)(e) of Wisconsin Employment Peace Act:

> "To cooperate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike."

Sec. 502 of Labor Management Relations Act:

> "Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act."